

# Exhibit HHH

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YATRAM INDERGIT, on behalf of :  
himself and others similarly :  
situated, :  
:  
Plaintiff, :  
:  
vs. :CIVIL ACTION  
:  
:  
RITE AID CORPORATION, RITE AID OF :  
NEW YORK, INC., and FRANCIS OFFOR :  
as Aider & Abettor, :  
:  
Defendants. :  
- - - - - x

July 12, 2011

Deposition of ROSITA SOLIS, taken  
pursuant to notice, held at the offices of Epstein  
Becker & Green, P.C., 250 Park Avenue, New York,  
New York, commencing at 10:05 a.m. before Jamie I.  
Moskowitz, a Registered Professional Reporter and  
Notary Public.

1 Q Were you a member of that union?

2 A Yes.

3 Q When you were promoted from shift  
4 supervisor to assistant manager, did you remain a  
5 member of the union?

6 A No.

7 Q How did that work?

8 A That's what I found. We were also --  
9 once you became an assistant or a manager, your  
10 benefits and everything that you had dropped. You  
11 would actually be paying more out of my pay, and the  
12 benefits were not the same. You didn't really have  
13 good benefits like you did when you were a cashier,  
14 key and supervisor.

15 Q As a member of the union, you had  
16 better benefits --

17 A Yes.

18 Q -- than you did as a member of  
19 management?

20 A Yes.

21 Q Are you referring to health benefits?

22 A Yes.

23 Q Any other benefits?

24 A No.

25 Q Did you ask to be promoted to

1 management?

2 A No.

3 Q This was something that the store  
4 manager decided for you?

5 MR. VALLI: Objection to form.

6 THE WITNESS: Well, he asked me if I  
7 think I could handle it. He thought I did good  
8 in the store and everything, and he saw  
9 potential in me, and I said, "Okay, I'll give  
10 it a try."

11 BY MR. WEINER:

12 Q Was there an increase in pay?

13 A Yes.

14 Q Was the shift supervisor position an  
15 hourly position?

16 A Yes.

17 Q And how about the assistant manager  
18 position that you held, was that hourly or salaried?

19 A Salaried.

20 Q Do you recall what the salary was?

21 A When you first started, I can tell you  
22 what I -- like every two weeks I would make. When I  
23 first started, it would be about maybe a thousand  
24 every two weeks, a little over.

25 Q Is that net or gross?

1 A That's -- that's net.

2 Q That's what you basically took to the  
3 bank?

4 A Yes.

5 Q And did that amount change over the  
6 course of time that you were an assistant manager?

7 A Every six months you would get a raise  
8 of maybe 30 cents.

9 Q Thirty cents an hour or 30 cents -- 30  
10 cents a week?

11 A Thirty cents an hour.

12 Q An hour.

13 So the salary also had an hourly  
14 component that was calculated into it? Thirty cents  
15 an hour is a little unusual to discuss a means of  
16 calculating an increase to a salary, isn't it?

17 MR. VALLI: Objection.

18 BY MR. WEINER:

19 Q If you know.

20 MR. VALLI: I don't know what you're  
21 asking her, and if I don't know what you're  
22 asking her --

23 MR. WEINER: I'll withdraw that  
24 question.

25

1 Q One at a time, and two different ones  
2 over the course of that time?

3 A Yes.

4 Q So, all together, there were about  
5 seven or eight employees who were your subordinates?

6 A Yes.

7 Q And you scheduled their hours of work?

8 A Yes. But we were given -- all  
9 managers were given, through SYSM, which is a  
10 message through the computer, what was the budget.

11 Q That's the labor budget?

12 A Yes, how many hours we had to deal  
13 with.

14 Q Was the labor budget expressed in  
15 terms of dollars or in terms of hours?

16 A Both.

17 Q During the time that you were a store  
18 manager, can you recall what your labor budget was?

19 A It would change every week. Every  
20 week you would get a different budget.

21 Q What were the factors that went into  
22 the labor budget changing every week?

23 MR. VALLI: Objection.

24 THE WITNESS: I guess it depends maybe  
25 what the store brought in that week.

1 BY MR. WEINER:

2 Q In terms of sales?

3 A In terms of sales. That's basically  
4 it. How many people you had, you had to, you  
5 know...

6 Q Were you told how many people you  
7 should have or was that something you could  
8 schedule?

9 A Does this have to do with, like, the  
10 hiring, like how many -- I don't understand.

11 Q Okay. Well, let me go back. I'll  
12 withdraw that question and ask you about the labor  
13 budget.

14 A Okay.

15 Q Even though it changed every week --

16 A Right.

17 Q -- would you be able to give me a  
18 range that it changed from and to, high, low, this  
19 kind of thing?

20 A The majority of the time it would be  
21 low. It would get cut a lot.

22 Q Can you recall a dollar amount?

23 A Not really. I mean, one week it would  
24 be -- say you have, in terms of hours, you would  
25 have, say, 200 hours to split between all the

1 employees. Then next week it will be 170. It would  
2 drop most of the time. For the dollars, I'm not  
3 sure.

4 Q Were the cashiers all paid the same  
5 hourly rate?

6 A In the beginning, yes. After that, we  
7 got a SYSM, stating that if we were to hire a  
8 cashier, they would have to be started at a certain  
9 amount, which was different from when it first  
10 started.

11 Q What was the difference?

12 A Fifteen cents. I think it started at  
13 seven, then you would have to hire them at 7.15.

14 Q Do you recall how many cashiers you  
15 hired?

16 MR. VALLI: Objection.

17 THE WITNESS: About -- as a manager  
18 about maybe three; three or four.

19 BY MR. WEINER:

20 Q What did you look for in a cashier?

21 A If they had experience in the past.  
22 They would have also had to take the drug test. I  
23 would give them a test right then and there, a  
24 little bit of math. You know, if I was to give this  
25 person, how much change would I get back, see how



1 they did with that. Their school experience.

2 That's basically it.

3 Q Do you recall approximately how many  
4 applicants applied for work when you were the store  
5 manager?

6 A Many.

7 Q Were there many that you rejected as  
8 applicants?

9 A Well, me, personally, I would have to  
10 go through him, through my district manager, to hire  
11 and fire. So, I would never really make the  
12 decision myself. I would come across an application  
13 and I would run it through him: "Do you think this  
14 is good? Because I really think this person has a  
15 good resume." And he would come see us some of the  
16 time. A rejection, a couple.

17 Q Were there applicants that you decided  
18 you would not even recommend to your district  
19 manager?

20 A No. I told him everybody that would  
21 come in and try to apply.

22 Q And did you give the district manager  
23 your view as to whether you thought they were good  
24 or not?

25 A Yes.

1 Q Did the district manager ever say to  
2 you that you had to hire someone that you had  
3 recommended not be hired?

4 A No. Just when I promoted one girl  
5 from a cashier to a supervisor, and he told me if I  
6 was sure, because she seemed kind of slow and, you  
7 know, not on the ball. But she ended up being a  
8 supervisor anyway.

9 Q Who was the district manager you had  
10 the conversation about the cashier with?

11 A Wade LaRue.

12 Q Wade LaRue?

13 A Yes, sir.

14 Q What was it about that cashier that  
15 you decided that you wanted to promote her?

16 A She did a great job. You would tell  
17 her to do something and she would do it, no  
18 questions asked. She wanted to learn more, wanted  
19 to -- on the job, she would ask; she wouldn't  
20 hesitate. She always wanted to learn more. She was  
21 always willing to go further.

22 Q And what was it that Wade saw that  
23 made him hesitate?

24 MR. VALLI: Objection.

25 THE WITNESS: I guess, to him, she

1 A No.

2 MR. VALLI: Objection.

3 BY MR. WEINER:

4 Q Other than those two individuals, do  
5 you recall who else you wrote up while you were the  
6 store manager?

7 MR. VALLI: Objection.

8 THE WITNESS: No.

9 BY MR. WEINER:

10 Q Were there any others?

11 A Yes.

12 Q Do you recall what position they may  
13 have held?

14 A Cashier.

15 Q Do you recall the reason that you  
16 wrote them up?

17 A Majority of the write-ups were late  
18 or -- that's it, late.

19 Q When you were the assistant store  
20 manager, did you recommend anyone be written up?

21 A No.

22 Q When you were the assistant store  
23 manager, did you recommend that anyone be promoted?

24 A No.

25 Q Did you recommend anybody be hired?

1 A No.

2 Q Did you have a chance to recall the  
3 amount of the labor budget?

4 A It would change every week.

5 Q It varied week to week?

6 A Yes.

7 Q And when the labor budget varied, your  
8 scheduling of employees also varied; is that right?

9 A Yes.

10 Q Could you schedule people as  
11 part-timers rather than full-timers, if you wanted  
12 to?

13 A I couldn't personally myself.

14 Q As a store manager?

15 A Yes.

16 Q What do you mean by that?

17 A It would have to go through Wade  
18 whether they be part-time, full-time, how many hours  
19 were given to the people.

20 Q So, tell me what the process was that  
21 you used to schedule the people who worked under you  
22 at the store.

23 A Well, while doing the schedule --  
24 actually, a schedule that they wanted would come out  
25 through the computer on its own.

1 Q What did that schedule look like?

2 A It was different. Every week the  
3 schedule would come out different.

4 Q The store hours of operation didn't  
5 change -- well, actually, they did. You mentioned  
6 that Saturday hours got cut back?

7 A That was for pharmacy.

8 Q For pharmacy.

9 How about the hours of the operation  
10 of the rest of the store, did they remain constant  
11 throughout your course of employment?

12 A Yes.

13 Q And I think you said that they started  
14 at 8:00 in the morning?

15 A Yes.

16 Q Eight-thirty. Was it 8:30?

17 A No. 8:00.

18 Q And how many people did you schedule  
19 to work at 8:00 in the morning?

20 MR. VALLI: Objection.

21 BY MR. WEINER:

22 Q Can you recall a typical schedule that  
23 you prepared?

24 A Well, like I said, it would come out  
25 on the computer. You would have to adjust it, but

1 fax it to them before you put it out there on the  
2 bulletin. They had to approve it.

3 You would get maybe one cashier in the  
4 morning, 8:00, main cashier.

5 Q And how long would you schedule that  
6 cashier to work?

7 A It depends. It would depend on what  
8 our budget was and what our hours were that week.

9 Q How long did it take you to prepare  
10 the schedule each week?

11 A Two to three hours.

12 Q Did you receive more hours or more  
13 dollars in the labor budget around holiday times?

14 A No. Maybe more hours, if that.

15 Q What was the busiest season for the  
16 store?

17 A Christmas.

18 Q And how many weeks before Christmas  
19 did you notice the business increase?

20 A Before Christmas?

21 Q Yes. How many weeks before Christmas?

22 A Three weeks.

23 Q And was summer a busier time than  
24 winter, other than the Christmas time?

25 A Not really.

1 Q Was spring any different than the  
2 fall?

3 A No.

4 Q How about during the day -- well,  
5 before we get to during the day, let me ask you,  
6 during the week, what was the busiest day of the  
7 week?

8 A Mondays.

9 Q What was the next busiest day of the  
10 week?

11 A Wednesdays.

12 Q Third busiest?

13 A Sundays.

14 Q Fourth?

15 A Tuesday. Friday and Saturday.

16 Q Friday and Saturday, in that order.  
17 Saturday was the least busiest day of  
18 the week?

19 A Yeah.

20 Q Would you schedule more hours on  
21 Mondays than you did on Saturday?

22 A Yes. Depends what was given to me.

23 Q Describe what was given to you. Were  
24 you given a number of weekly hours that you  
25 allocated?

1           A           Every week I was given a number of  
2   hours.

3           Q           And did you allocate those hours to  
4   the people who worked in the store?

5           A           Well, say it was 200 hours. We had to  
6   split between all the workers that were there, 200  
7   hours.

8           Q           And that was a decision that you made  
9   when you were the store manager?

10          A           No.

11          Q           Who made that decision?

12          A           Wade.

13          Q           Did he tell you, "I want Betty to work  
14   30 hours, I want Jorge to work 20 hours," that kind  
15   of thing?

16          A           Yes.

17          Q           He told you exactly how many hours he  
18   wanted each person to work?

19          A           Well, whatever was given to me he said  
20   I can split up, but he would look at the schedule  
21   and say, "No. Give this person more," because  
22   probably their work ethic was better or they can get  
23   there on time more.

24          Q           Were there times that you and he would  
25   argue who should receive the hours?



1 A No.

2 Q Did you make recommendations for the  
3 schedule that he approved?

4 A No recommendations, no. I would tell  
5 him that the hours that were given to us, which all  
6 the managers did, weren't enough. But we had to  
7 take it.

8 Q Did you write the schedules out for  
9 the workers and send them to Wade for him to take a  
10 look at?

11 A Yes. Every schedule, yes.

12 Q When did you do that?

13 A Monday mornings.

14 Q And was that for the very week that  
15 you were in or was that for the following week?

16 A Following week.

17 Q And if you had 200 hours, you'd  
18 allocate those 200 hours and send that to Wade  
19 Monday morning?

20 A Yes.

21 Q And when would you hear from Wade  
22 about his views of the allocation of the hours to  
23 the scheduled workers?

24 MR. VALLI: Objection.

25 THE WITNESS: That same day.

1 BY MR. WEINER:

2 Q How often was your schedule modified  
3 by Wade?

4 A Almost all the time.

5 Q And why was that?

6 MR. VALLI: Objection.

7 THE WITNESS: I guess it will probably  
8 go over sometimes, what was given.

9 BY MR. WEINER:

10 Q So, would you be given 200 hours, and  
11 you would schedule people to work 225, for example?

12 A No. It would be -- no, a little bit,  
13 202. We would get in trouble for that.

14 Q Wade would say, "I didn't give you  
15 202"?

16 A Yup.

17 Q "I didn't give you 201. I gave you  
18 200"?

19 A Yes.

20 Q And what would you say?

21 A "Okay."

22 Q Did you have to work with anyone in  
23 the union about scheduling any of the hours?

24 A No.

25 Q Was there any kind of a seniority

1 system, where one employee would be entitled to more  
2 hours than anyone else?

3 A I was told, yes.

4 Q And who told you?

5 A Wade.

6 Q And what did Wade say?

7 A "The longer a person is there, the  
8 more hours they get."

9 Q Did he say that was because of the  
10 collective bargaining agreement?

11 A No.

12 Q Did you ask him why he told you that  
13 the people who were there longer should get more  
14 hours?

15 A No.

16 Q Did he tell you why?

17 A Just because they were there longer.

18 Q He thought that was fair?

19 MR. VALLI: Objection.

20 BY MR. WEINER:

21 Q Do you believe that he thought that  
22 was fair, or do you know why he told you that people  
23 who were there longer should get more hours?

24 MR. VALLI: Objection.

25 THE WITNESS: I didn't know why he

1 if you passed the test, you would receive a  
2 Certificate of Achievement?

3 A On some of them there were tests and  
4 you would receive the certificate, yes.

5 Q Was that for all employees or was that  
6 for management employees?

7 A All employees.

8 Q Was that something that Mark also did  
9 or was this something that Wade initiated?

10 A Mark also did.

11 Q Did you take the CBTs when Mark was  
12 your district manager?

13 A Yes.

14 Q You don't recall going to any of these  
15 monthly meetings where Mark was the district  
16 manager; is that correct?

17 A Correct.

18 Q Do you recall the first meeting you  
19 went to when Wade was the district manager?

20 A No.

21 Q Do you recall the last meeting you  
22 went to when Wade was the district manager?

23 A A specific date, no.

24 Q Not a specific date, just the meeting  
25 itself?

1           A           No. They all had to do with the same  
2    thing.

3           Q           What did he say about payroll at the  
4    meeting?

5           A           You have to follow it. Couldn't go  
6    over budget, over hours. You have to stick to that.  
7    You can get written up if you did.

8           Q           And what did he say about scheduling?

9           A           Basically you had to schedule what was  
10   given.

11          Q           So, what he had to say about payroll  
12   was that you had to stay within the budget?

13          A           Yes.

14          Q           What he said about scheduling was that  
15   you had to stay within the budget; is that correct?

16                   MR. VALLI: Objection.

17                   THE WITNESS: Yes.

18   BY MR. WEINER:

19          Q           And you said that hours were a subject  
20   of the meetings as well?

21          A           Yes.

22          Q           What did he say about the hours?

23          A           Couldn't go over.

24          Q           Was there conversation and discussion  
25   among the store managers at the meetings about these

1 subjects?

2 A Yes.

3 Q Did store managers ask Wade questions  
4 or make comments?

5 A Yes.

6 Q Do you recall any of those comments or  
7 questions?

8 A Why couldn't we get more. What would  
9 happen if we went over.

10 Q And do you recall the answers?

11 A Written up if you went over. There  
12 was no more to be given out.

13 Q Were you ever written up for going  
14 over your payroll?

15 A Not that I remember.

16 Q Were you ever written up for anything?

17 A Yes.

18 Q What were you written up for?

19 A Not finishing a lane on time,  
20 planogram. That's it, that I remember.

21 Q Did Wade write you up?

22 A Yes.

23 Q How did he know how long it took you  
24 to complete a planogram?

25 A He would be in the store a lot.

1 things had to be done a certain way also.

2 BY MR. WEINER:

3 Q Do you recall what they were?

4 A Same thing: facing the store,  
5 outdates.

6 Q Did you say anything to him?

7 A Just okay, thank you. That's it.

8 Q And what did the district manager say  
9 when he was with the regional vice president and  
10 they were walking the store with you?

11 A Nothing much.

12 Q Did the regional vice president ever  
13 come to any of the monthly meetings that the  
14 district manager had?

15 A No.

16 Q Did you ever ask the regional vice  
17 president for more hours to schedule associates or  
18 cashiers?

19 A No.

20 Q Why not?

21 A Managers just thought what was given  
22 to us was given to us by Wade, and we didn't know we  
23 could go higher to ask anybody else.

24 Q So, you didn't know that you could go  
25 to anybody that was higher than Wade or a district

1 manager for additional budget authority; is that  
2 right?

3 A Right. That came from them.

4 Q They told you what budget you had to  
5 use to run the store, right?

6 A Yes. Not me, personally, on a  
7 personal basis like we are now. The SYSM.

8 Q They would communicate with you  
9 electronically, through the computer?

10 A Yes.

11 Q Through the system that you call SYSM?

12 A Yes.

13 Q Were any of the assistant store  
14 managers at your store paid by the hour or were they  
15 all salaried?

16 A Salaried.

17 Q Do you know if there were assistant  
18 store managers in your district that were paid by  
19 the hour?

20 A Not that I know of.

21 Q Do you know if there were any  
22 assistant store managers at stores outside your  
23 district?

24 A Not that I know of.

25 MR. WEINER: I'm going to ask to take



1 another two-minute break.

2 (Whereupon, a short break was taken.)

3 BY MR. WEINER:

4 Q Regarding the meetings that were  
5 conducted by the district manager, the monthly  
6 meetings where payroll, scheduling and hours were  
7 discussed, is there anything else about those  
8 meetings that you can recall, that you haven't  
9 described yet?

10 A No. Maybe if a new product was going  
11 to come up, we would get a heads-up about it, talk  
12 about the product. Other than that...

13 Q I want to go back to Exhibit 3 that's  
14 in front of you. And you described the RAPTAR page  
15 and the commendation you received from the customer.

16 Was this commendation from the  
17 customer signed by a fellow named Mike Caden,  
18 director of customer support? Do you know who that  
19 is?

20 A No.

21 Q The next page, do you recognize what  
22 that is? It says "SYSM" at the top, "SYSM INBASKET  
23 PRINT."

24 A Yes.

25 Q Could you identify what this is?

1 strength; is that right?

2 A Yes.

3 Q I heard you describe assigning work as  
4 a strength that you had; is that correct?

5 A Yes.

6 Q And that unloading a truck correctly  
7 was a strength you had as a manager --

8 A Yes.

9 Q -- is that correct?

10 A Yes.

11 Q Tell me about unloading a truck  
12 correctly. What did that involve?

13 A Truck would come in, in the morning.  
14 Correctly spotting everything where it goes, instead  
15 of putting everything in one aisle and then  
16 separating it. It's double work.

17 Q When you say "spotting," is that the  
18 term that is used for --

19 A Putting things correctly where they  
20 go.

21 Q How long did that process take, of  
22 unloading the truck?

23 A Depending how many pallets we got that  
24 week.

25 Q And did that vary week to week?

1 A Yes.

2 Q What was the highest number of pallets  
3 you got in a week?

4 A Fifteen.

5 Q What was the lowest number of pallets  
6 you got in a week?

7 A Five.

8 Q And what was on the pallets?

9 A Merchandise.

10 Q Everything? Or were certain pallets  
11 designated to certain types of merchandise?

12 A No. Everything.

13 Q Why, in some weeks, would you receive  
14 15 pallets, and in other weeks, you would only  
15 receive five?

16 A Holidays. It could be a holiday.

17 Q Holiday you would receive much more;  
18 is that correct?

19 A Yes. Or Wade would go into the system  
20 and change the numbers of what I ordered.

21 Q Tell me about the ordering process.

22 Did you make the initial order for merchandise, as a  
23 store manager?

24 A No. He would tell me what to order  
25 more of and what to order less of.

1 Q Was it your job to prepare the order  
2 for merchandise that you wanted to see in the store?

3 MR. VALLI: Objection to form.

4 THE WITNESS: Can you repeat that?

5 I'm sorry.

6 BY MR. WEINER:

7 Q Was it your job to make the order for  
8 the merchandise that you wanted to see sold in the  
9 store?

10 MR. VALLI: Objection to the form.

11 THE WITNESS: I was able to go into  
12 the system and put orders in, but he would  
13 change it.

14 BY MR. WEINER:

15 Q On what basis would you order  
16 merchandise?

17 A If a certain product was going to be  
18 on sale that week, you order more of it.

19 Q Did you have customers that came to  
20 you and said, "I really like this product. I wish  
21 you'd get it in for me"?

22 A Yes.

23 Q Did you put those on your order?

24 A Yes, I would put those on my order, if  
25 we had a spot for it in the store.

1 Q Were there times that you requested  
2 items in your order and Wade said, "That's a good  
3 order. I'm not going to change it"?

4 A Maybe two or three times, on certain  
5 sections of the store. But the majority, he would  
6 go in and change the order.

7 Q Do you know why he changed your order?

8 A No.

9 Q Did he ever discuss the changes in  
10 orders that he made with you?

11 A No.

12 Q Did you ever ask him why he changed  
13 your order?

14 A Couple of times, yes.

15 Q What did he tell you?

16 A I remember once -- once he said  
17 because an item was on sale the following week, a  
18 really, really good price. He ordered way more of  
19 it.

20 Q That makes sense, doesn't it?

21 A Depends how many people get in the  
22 store that day. It's not always the same.

23 Q It varied from week to week?

24 A Yes.

25 Q It varied from day to day?

1 A Yes.

2 Q If an item was in your store after a  
3 certain period, was it marked down?

4 A After a long period of time, we would  
5 get a SYSM saying what had to be marked down.

6 Q Did markdowns affect the profitability  
7 of the store?

8 A Yes.

9 Q Now, I'm going to show you what I have  
10 marked as Exhibit Number 1. I believe you have a  
11 copy of this. I know your lawyer does. I'll give  
12 you the marked copy, and I'm just going to ask you  
13 not to make any marks on it at this time.

14 Showing you what's been marked as  
15 Exhibit Number 1, that's the Rite Aid job  
16 description for a store manager.

17 Have you ever seen this before?

18 A I don't remember.

19 Q Was the Rite Aid job description given  
20 to you before you became a store manager?

21 A Yeah, just told me verbally. I don't  
22 remember getting that.

23 Q The summary of the store manager  
24 states that "the primary purpose of this position is  
25 to manage the operation of an individual store in an

1 Rite Aid?

2 A Yes.

3 Q Were you able to converse with your  
4 customers in Spanish?

5 A Yes.

6 (Whereupon, a short break was taken.)

7 BY MR. WEINER:

8 Q During the time that you worked as a  
9 store manager, did the number of hours that you  
10 worked change during the course of your employment  
11 as a store manager?

12 A No.

13 Q Approximately how many hours a week  
14 did you work?

15 A You had to do 50.

16 Q What was your schedule as a store  
17 manager, your weekly schedule? Like start with  
18 Monday, if you don't mind?

19 A It changed.

20 Q Oh, did you set your own schedule?

21 A No. We were told that the  
22 managers/assistant supervisors had to do at least  
23 every other weekend.

24 Q Why was that?

25 MR. VALLI: Objection to form.

1 THE WITNESS: I don't know.

2 BY MR. WEINER:

3 Q Did you have a typical schedule or did  
4 it vary so much that it was just different every  
5 single week?

6 A It would be different. Sometimes I  
7 would open, sometimes I would close.

8 Q If you opened, what were the things  
9 that you did when you opened the store?

10 A As soon as you opened, you would punch  
11 the safe.

12 Q Punch the safe?

13 A Punch the numbers on the safe.

14 Q To do what?

15 A To take the deposit out.

16 Q To take the deposit out?

17 A It would take 10 to 15 minutes to  
18 open.

19 Q Open the safe, you mean?

20 A Yes.

21 Q Let me ask you this: Did the same  
22 manager who closed the store open the store?

23 A Sometimes, yes.

24 Q Well, if you were opening the store,  
25 then what?



- 1 A Yes, drop deposits off to the bank,
- 2 check SYSMs right away.

3 Q SYSMs would have messages from the  
4 district office?

5 A Yes.

6           Q           Which did you do first, drop deposits  
7   or check SYSMs?

8           A           As I was waiting for the safe to pop  
9   open, because you had to wait 10 to 15 minutes, I  
10   would check the SYSMs.

11 Q Was that some kind of safety device,  
12 to make the safe open after 10, 15 minutes?

13           A           I'm guessing, yes.

14 Q And then after you opened the safe,  
15 checked SYSMs, you dropped the deposits in the bank  
16 across the street? Is that what you mean by  
17 "dropping deposits"?

18                    A                    Yes.

19 Q Is there something more than that?

20           A           No, no. Yeah, you would go drop them  
21   off in the slot that they had.

22           Q           It didn't even matter whether the bank  
23   was open?

24 A No.

25 Q And then what did you do?

1           A           Checked SYSMs; see what had to be  
2     done, whether it be planograms, recalls, price  
3     changes.

4           Q           And then?

5           A           See what I had to do and get to work.

6           Q           And if you opened the store on Monday,  
7     what time would you leave the store at the end of  
8     your shift?

9           A           Well, if I open, I would have to be  
10    there at least a half an hour before.

11          Q           Yes.

12          A           So, it would be a 10-hour day, so that  
13    would be 8 to 6, or 7:30 to 5:30.

14          Q           During the day could you leave the  
15    store, if you needed to?

16          A           If there was someone there that was  
17    able to cover.

18          Q           Someone like the assistant store  
19    manager?

20          A           Yes, or the shift supervisor.

21          Q           Or the shift supervisor.

22                      As long as one of the three of you  
23    were there?

24          A           Yes.

25          Q           Then the store was covered from a

1 management perspective; is that right?

2 A Yes.

3 Q And did you leave during the day to do  
4 different things outside the store?

5 A Just to get change -- drop off  
6 deposits, get change. For lunchtime, I would  
7 probably go and get something, come right back, eat  
8 it at the office.

9 Q Did you take a regular meal period?

10 A Most of the time, no.

11 Q What did you do, go out and grab a  
12 sandwich from a deli and bring it back and eat it in  
13 the office?

14 A Or bring something from home.

15 Q How many days a week did you generally  
16 open?

17 A We had to do at least -- you had to  
18 open at least three times a week.

19 Q And how many times a week did you  
20 close?

21 A At least three, four times a week.

22 Q Which days did you open, or did that  
23 vary?

24 A It varied.

25 Q And same with the days that closed?

1 A It varied.

2 Q And same with the number of weekends  
3 that you worked? That varied, too?

4 A Well, that varied, but we had to do  
5 every other weekend, if not both. Sometimes we had  
6 to do both together. If we did every other weekend,  
7 it would have to be back to back.

8 Q You mean Saturday and Sunday?

9 A Yes.

10 Q So, every other week you'd work both  
11 Saturday and Sunday, and the following week you'd  
12 have Saturday and Sunday off; is that right?

13 A Yes.

14 Q And did you schedule the assistant  
15 store manager to do the same thing? If you were  
16 working the one weekend, was the assistant store  
17 manager working the other weekend?

18 A Yes.

19 Q How about the shift supervisor; did  
20 they have to work the weekends, too?

21 A Yes.

22 Q So that the shift supervisor covered  
23 those hours on the weekend where either you weren't  
24 there or the assistant store manager wasn't there?

25 A We could have been there at the same

1 time.

2 Q Do you generally schedule the three of  
3 you to be covering the store, rather than to be  
4 there at the same time?

5 A Sometimes.

6 Q Did you prepare the schedules for the  
7 assistant store manager and for the shift  
8 supervisor?

9 A Yes, but I had to get it approved.

10 Q When you were in the store, were you  
11 in charge of the store?

12 A I didn't feel that way.

13 Q Well, when you were in the store, the  
14 assistant store manager wasn't in charge of the  
15 store, were they?

16 A No.

17 Q And when you were in the store, the  
18 shift supervisor wasn't in charge of the store, were  
19 they?

20 A When I wasn't in the store?

21 Q When you were in the store.

22 A When I was, no.

23 Q And when you were in the store, you  
24 were the highest official in the store, weren't you?

25 A Yes.

1 MR. VALLI: Can we go off the record.

2 (Whereupon, a discussion was held off  
3 the record.)

4 BY MR. WEINER:

5 Q Did Rite Aid have any program that  
6 certified managers as trainers?

7 A Not that I recall.

8 Q How often did you evaluate the  
9 performance of the hourly associates?

10 A On a monthly basis.

11 Q A written evaluation?

12 A Sometimes.

13 Q Was there an annual performance  
14 evaluation that you had to perform, as a store  
15 manager?

16 A There were these cards that would be  
17 given out, similar to the RAPTAR, if the associate  
18 was doing a good job. We would write their name on  
19 it, give them one, and Wade was given a poster, that  
20 we had to put them there, so he can see.

21 Q Who you had given the good job cards  
22 to?

23 A Yes. And he would want to know why.

24 Q How many good job cards did you give  
25 out?

1 MR. WEINER: Then I'm going to reserve  
2 any additional time I have to see if I have any  
3 redirect. So, please.

4 MR. VALLI: The first thing is we  
5 would like an opportunity to read and review  
6 this transcript, so please place that on the  
7 record.

8 EXAMINATION BY

9 MR. VALLI:

10 Q Who is Bruce Kaplan?

11 A Bruce Kaplan was a manager there.

12 Q You indicated he had made certain  
13 promotions. Do you know if there was input from his  
14 district manager in those promotions?

15 A There had to be.

16 Q You used the word "deposits." Are  
17 those both deposits into the safe and deposits into  
18 the bank?

19 A Yes.

20 Q Did you have to open the safe to make  
21 a deposit or was it a slot?

22 A There was a slot you would put money  
23 in. Push it, it would go down to the bottom. You  
24 would open the bottom and make a deposit.

25 Q Was the bottom locked?

1 A It was two safes. Bottom was locked,  
2 top was not.

3 Q Okay.

4 A Bottom had the safe timer, 10 to 15  
5 minutes.

6 Q You talked about Jill and Meir and  
7 Bruce and Peggy as store managers?

8 A Yes.

9 Q And they had various styles.

10 Did they all have the same duties and  
11 responsibilities?

12 A Yes.

13 Q With respect to the labor budget, do  
14 you know how it is calculated?

15 A Totally depending on what your store  
16 makes. Some of the time, not all of the time. So  
17 I'm not sure.

18 Q Were you involved in the creation of  
19 the labor budget for your store?

20 A No.

21 Q Were you involved in the creation of  
22 the labor budget for the district?

23 A No.

24 Q In terms of paying cashiers, you said  
25 at some point it went from \$7 to \$7.15?



1 A Yes.

2 Q Do you know if that's minimum wage?

3 A I'm not sure.

4 Q Were associates hired at more than  
5 minimum wage?

6 A No.

7 Q In terms of hiring, if Wade said you  
8 could not hire someone, could you hire them anyway?

9 A No.

10 Q You indicated at some point in your  
11 termination you were told that it was taking too  
12 long to set up planograms and too long to set up  
13 seasonal?

14 A Yes.

15 Q What were you doing during the day  
16 that you couldn't get planograms done?

17 A Taking out garbage; running back and  
18 forth to the registers for pickups, approvals;  
19 dealing with the customers on a one-on-one; going to  
20 the bank, making deposits.

21 Q Was there anything that you needed to  
22 finish planograms in the time that Wade gave you?

23 A I'm sorry, say that again, please.

24 Q Was there anything that you needed at  
25 the store to finish planograms at the time that Wade

1 gave you?

2 A As for fixtures and stuff? What do  
3 you mean "needed"?

4 Q In terms of labor.

5 A Yes.

6 Q Okay. What did you need?

7 A More hours, more people.

8 Q The 200 hours that we have discussed,  
9 in terms of labor budget, did that include the  
10 hundred hours for you and the ASM?

11 A Yes.

12 Q Give me a typical week, then, in terms  
13 of opening. If you were opening the store, what  
14 time would the next employee come in?

15 A Eight o'clock.

16 Q And other than yourself and this one  
17 employee, who else would be in the store at opening?

18 A The majority of time, no one, because  
19 we wouldn't have enough payroll.

20 Q And where would that employee be  
21 assigned?

22 A The 8:00 employee? Register.

23 Q All the other duties that had to be  
24 done in the morning, if there was no other employee  
25 there, who would do them?

1 A Myself.

2 Q Was there a register that you called  
3 the manager's or supervisor's register?

4 A Yes. We were told we had to have one  
5 register that was just for us, that included the  
6 money order.

7 Q Who told you that?

8 A Wade and Hany.

9 Q Was that a register that you, as the  
10 store manager, used?

11 A Yes.

12 Q Who else used that register?

13 A Assistant manager.

14 Q And what about the shift supervisor?

15 A Yes.

16 Q The shift supervisor, when they  
17 worked, did they ever open the store?

18 A Yes.

19 Q And the duties that you described,  
20 were those also the duties of the shift supervisor  
21 at opening?

22 A Yes.

23 Q With respect to any of the individuals  
24 that were hired into your store when you were the  
25 store manager, were any of those hires conducted

1 without Wade's approval?

2 A No.

3 Q You indicated at some point that you  
4 could not do overtime. What does that mean?

5 A We could not do overtime. Assistant  
6 managers and managers had to do a total of 50, but  
7 we did way more, but we wouldn't get paid for that;  
8 it would just be a total of 50.

9 Q So even though you were scheduled for  
10 50, you worked more than 50?

11 A Yes, sir.

12 Q What was the most hours you ever  
13 worked in a week?

14 A In a week?

15 Q Approximately.

16 A Seventy, 72. Sometimes I would get  
17 stuck doing double shifts because there would be no  
18 one else to do it.

19 Q And there was no one else to do it  
20 why? Why couldn't you get someone else in the  
21 store?

22 A Not enough payroll.

23 Q Did you ever work less than 50 hours  
24 in a week?

25 A No.

1 Q Could you assign an employee to work  
2 more than 40 hours in a week without Wade's  
3 approval?

4 A No.

5 Q At some point we went through a lot of  
6 CBT Certificates of Achievement?

7 A Yes.

8 Q Were there certain CBTs that you had  
9 to do every month?

10 A Yes.

11 Q And were there CBTs that also had to  
12 be completed by employees every month?

13 A Yes.

14 Q Were there any CBTs that you did, as  
15 the store manager, that employees did not have to  
16 do? I'll give you an example to make it easier.  
17 Rite Aid WorkForce Management Modules?

18 A If I'm not mistaken, that was just for  
19 assistants and managers, just that one.

20 Q Okay. Other than the WorkForce  
21 modules, were the other CBTs to be completed by all  
22 employees?

23 A Yes.

24 Q You have indicated that Wade said that  
25 he wanted CBTs done when they came in?

1 A Yes.

2 Q If you were not in the store, what  
3 would happen?

4 A Whoever was there would have to get  
5 theirs done.

6 Q So, would the ASM decide who would  
7 take a CBT?

8 A Yes.

9 Q Would the shift supervisor decide who  
10 should take a CBT?

11 A Yes.

12 Q Did you ever make an adjustment to an  
13 associate's hours that did not coincide with the  
14 schedule?

15 A No. The only time I would make a  
16 change is if someone would call out. You had to.

17 Q In terms of punching in and punching  
18 out, there was some testimony about correcting, I  
19 guess, the payroll to match into the schedule.

20 Did you ever give an employee less  
21 hours than they worked?

22 A No.

23 Q Did you ever give an employee more  
24 hours than they worked?

25 A No.

1 Q Your store was located in New Jersey?

2 A Yes.

3 Q Did you have any issues with snow when  
4 you worked there?

5 A Oh, yes.

6 Q Could you close the store early  
7 without DM approval?

8 A No.

9 Q Could you open the store late without  
10 DM approval?

11 A No.

12 Q Did you set the hours for your store?

13 A No.

14 Q Ms. Solis, I'm showing you what we  
15 marked as Exhibit 2. I'm not sure if you've seen  
16 this actual exhibit, but you've seen the pages.

17 Going to the last page, there's a  
18 space for appraiser signature and appraiser  
19 supervisor. That's not filled in. Do you know why?

20 A This just had to get faxed.

21 Q To whom?

22 A To Wade or Hany.

23 Q At any point while were you an ASM,  
24 did your store manager have you prepare your annual  
25 appraisal?

1 A Yes.

2 Q In terms of SYSMs, were there certain  
3 SYSMs that went to every store in the district?

4 A Yes.

5 Q Were there certain SYSMs that just  
6 went to your store?

7 A Yes.

8 Q Do you know if the products in the  
9 stores in your district were the same in each store?

10 A Yes.

11 Q Could you take a look at Exhibit 1,  
12 please? Doug had shown you this before, and I want  
13 to go to the middle paragraph, which is Summary, and  
14 it reads, "The primary purpose of this position is  
15 to manage the operation of an individual store in an  
16 efficient manner while maximizing sales."

17 Can you tell me how, as a store  
18 manager, you would maximize sales?

19 A Depending on what we would order, how  
20 much we ordered, that would bring in more sales.

21 Q Could you control the prices of your  
22 products as a store manager?

23 A No.

24 Q Could you control the types of  
25 products that you sold?



1 A No. What we got was what we got.

2 Q What is margin in that paragraph?

3 A Margin in that paragraph, meaning you  
4 had to -- you had to follow a certain number that  
5 they would give.

6 Q And profitability, that would be how  
7 many -- what your revenue was in the store versus  
8 your expenses?

9 A Yes.

10 Q And the expenses in the store would  
11 be, I guess, the structure itself, the electric, the  
12 heat?

13 A Yes.

14 Q Did you have control over that, as a  
15 store manager?

16 A No.

17 Q Labor budget, that would be the  
18 payroll expenses?

19 A Yes.

20 Q Did you have control over that?

21 A No.

22 Q Did you have a loss prevention  
23 associate or employee in the store, like a security  
24 guard?

25 A For the last couple months I was

1       there.

2               Q               Do you know if the payroll or the cost  
3       of the loss prevention employee was charged to the  
4       profitability of your store?

5               A               I believe so.

6               Q               Did you set the hourly rate or payroll  
7       of that employee?

8               A               No.

9               Q               Did you supervise that employee?

10              A               No.

11              Q               Going to paragraph 2 of the central  
12       duties and responsibilities, do you know what EBITDA  
13       stands for?

14              A               I don't remember at this time.

15              Q               It's earnings before interest, taxes,  
16       depreciation and amortization.

17              A               It had to do with profit and loss.

18              Q               Did you have a RAD pharmacy tech  
19       certification?

20              A               You mean like a --

21              Q               Unfortunately, you have to actually  
22       talk as if you're still talking to Doug, instead of  
23       turning your head, because we have to get it all on  
24       the record.

25              A               Can you state it again?

1 Q It's on page 2, down at the bottom,  
2 under Certificates, Licenses and/or Registrations.

3 A Okay.

4 Q It says, "This position requires an  
5 RAD pharmacy technician certification."

6 A The only thing I remember doing was a  
7 CBT on how the pharmacy runs.

8 Q And was that before or after you were  
9 a store manager?

10 A Before.

11 Q Now, other than having associates take  
12 a CBT, how often did you talk to your associates  
13 about sale -- the sale of tobacco to teens?

14 A At least once a week, just to refresh  
15 their memory.

16 Q Other than a CBT, how often did you  
17 talk to them about flexible spending and health  
18 reimbursement?

19 A Maybe every couple of weeks.

20 Q What is flexible spending and health  
21 reimbursement?

22 A Flexible spending, okay, that, to my  
23 recollection, meant -- it had to do a little bit  
24 with the 1199 and how they got paid.

25 Q How often would employees block

1 electrical panels?

2 A Not often, no.

3 Q Did your photo lab have chemicals, or  
4 was it a stand-alone kiosk?

5 A It was a kiosk.

6 Q Did it have any chemicals at all that  
7 you had to replenish?

8 A No. Just the ink.

9 Q I believe on direct, at the end, you  
10 stated that you did not feel like you were in charge  
11 of the store; is that correct?

12 A Yes.

13 Q Why did you feel that way?

14 A I was told -- I was given a list of  
15 stuff to do, told how to run the store. The  
16 district manager would be there three times a week,  
17 just looking around, always saying something was  
18 wrong, telling me how to do things.

19 Q So, who do you think actually ran the  
20 store?

21 A Oh, Wade.

22 Q The district manager?

23 A Yes, sir.

24 MR. VALLI: I have nothing further.

25

1 EXAMINATION BY

2 MR. WEINER:

3 Q Who supervised the security guard?

4 A Hany.

5 Q The security guard didn't report to  
6 you?

7 A He would come in, punch in. Basically  
8 that's it. Just walk around the store.

9 Q How many minutes did Wade spend in the  
10 store?

11 A Hours.

12 Q Each time --

13 A Yes.

14 Q -- he visited?

15 A Yes.

16 Q How many visits did he make a day?

17 A A day? Once.

18 Q How many visits did he make a week?

19 A Two or three.

20 Q How many hours was the store in  
21 operation during the week?

22 A From 8 to 10, except for Sundays, 9 to  
23 8.

24 Q So, that's 14 hours times 6, plus 11?

25 A On Sunday, yes.

Yatram Indergit, et al. v. Rite Aid Corporation, et al. 1:08-cv-09361-PGG-HBP

Rosita Solis

July 12, 2011

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## C E R T I F I C A T E

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STATE OF Garden City :  
 COUNTY/CITY OF New York :

Before me, this day, personally appeared  
 ROSITA SOLIS, who, being duly sworn, states that the  
 foregoing transcript of his/her Deposition, taken in  
 the matter, on the date, and at the time and place  
 set out on the title page hereof, constitutes a true  
 and accurate transcript of said deposition.

Rosita Solis

ROSITA SOLIS

SUBSCRIBED and SWORN to before me this 12<sup>th</sup> 29<sup>th</sup>  
 day of July/Aug, 2011, in the  
 jurisdiction aforesaid.

Syed I. Hussain  
 Notary Public-State of New Jersey  
 Qualified in Bergen County  
 No. 2274315

My Commission Expires 12/31/2012

Syed I. Hussain

Notary Public

# Exhibit III

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

YATRAM INDERGIT, on behalf of himself  
and others similarly situated,

Plaintiff,

- vs -

RITE AID CORPORATION, RITE AID OF  
NEW YORK, INC., and FRANCIS OFFOR as  
Aider & Abettor,

Defendants.

-----X

Tuesday, July 12, 2011

9:48 a.m.

DEPOSITION of STEPHEN F. SPENCER, taken by  
Defendants, pursuant to Fed.R.Civ.P. 30, and  
agreement of counsel, held at the offices of  
Epstein Becker & Green, P.C., 250 Park Avenue,  
New York, New York 10177, before Janet Hamilton,  
a Registered Professional Reporter and Notary  
Public of the State of New York.

DiNOVO PRICE ELLWANTER & HARDY, LLP  
7000 North MoPac Expressway, Suite 350  
Austin, Texas 78731

Attorneys for Plaintiff



1 A. No.

2 S. Spencer, 7/12/11

3 Q. And if it was a telephone  
4 deposition, you were sitting with the court  
5 reporter somewhere and the other people were on  
6 the phone?

7 A. No.

8 Q. No?

9 A. No.

10 Q. Did anyone make you raise your  
11 right hand?

12 A. No, they did not.

13 Q. No. Okay. Is it possible that  
14 that was maybe an interview instead of a  
15 deposition?

16 A. I was told I was going to be  
17 deposed over the phone. I gave information. I  
18 gave information that was asked of me.

19 Q. Okay.

20 A. To my knowledge, that's what it  
21 was.

22 Q. But, at least as of 2005, you had a  
23 very good understanding of what it meant to be  
24 paid on a salary basis, it sounds like?

25 A. Yes.

1 Q. Yes. So you understood at

2 S. Spencer, 7/12/11

3 Duane Reade that you were being paid a salary  
4 for all the hours you worked, regardless of how  
5 many hours you worked?

6 A. Yes.

7 Q. Was that how you were paid at  
8 Rite Aid as well?

9 A. I was being paid on a salary at  
10 Rite Aid. Yes.

11 Q. And you understood at Rite Aid that  
12 the salary you received was for all hours that  
13 you worked?

14 A. Yes.

15 Q. Regardless of how many hours you  
16 worked?

17 A. Yes -- no. That's not true.

18 Q. No?

19 A. I was told when I was hired that I  
20 had to work an average of 50 hours a week as a  
21 store manager. Upon my interview.

22 Q. And while you were working for  
23 Rite Aid as a store manager, did you ever work  
24 less than 50 hours in one week?

25 A. No.

1 Q. Never took any vacation?

2 S. Spencer, 7/12/11

3 A. No.

4 Q. Never took any personal time?

5 A. No. I was not given any.

6 Q. And there was not a single week  
7 where you worked 49 instead of 50 hours?

8 A. None.

9 Q. And you understood, though, at  
10 Rite Aid that, if you worked 65 hours, you  
11 weren't going to receive additional pay?

12 A. Yes.

13 Q. I'm correct?

14 A. Yes. You're correct. Yes. I  
15 agree.

16 Q. And the Clearview Cinemas lawsuit,  
17 what was that about?

18 A. Well, I was deposed -- that wasn't  
19 a lawsuit. It was a customer who was suing the  
20 company. I was the theater general manager.  
21 And the customer was claiming that they had an  
22 accident in the theater. Like, they slipped and  
23 fell due to unsafe conditions. And I was  
24 definitely at an office where I gave a  
25 deposition.

1 MR. SABA: Objection. Form.

2 S. Spencer, 7/12/11

3 A. No, I did not.

4 Q. (By Ms. Barbaree) And you didn't  
5 say to Josephine, "I'm concerned about being  
6 paid on a salary basis for any reason"?

7 MR. SABA: Objection. Form.

8 MS. BARBAREE: What's your  
9 objection?

10 MR. SABA: It calls for assuming  
11 facts in evidence -- not in evidence.  
12 Excuse me. It's misleading. And I think  
13 it misstates or mischaracterizes -- a  
14 mischaracterization.

15 Q. (By Ms. Barbaree) You can answer  
16 the question. Do you need her to read it back?

17 A. Yes, please.

18 THE REPORTER: "And you didn't say  
19 to Josephine, 'I'm concerned about being  
20 paid on a salary basis for any reason'?"

21 MR. SABA: And I think misleading  
22 as well.

23 A. No, I did not.

24 Q. (By Ms. Barbaree) And you didn't  
25 talk to Mr. Calisi about your pay at all?

1 A. No, I did not.

2 S. Spencer, 7/12/11

3 Q. Do you know how many pharmacy  
4 employees worked at 3883?

5 A. Anywhere from eight to ten, I  
6 believe.

7 Q. What were the things that Evan  
8 trained you on while you were store manager in  
9 training?

10 A. Merchandising. Making the  
11 employees schedules. Sending and receiving  
12 sysms. The cash register. Making deposits.  
13 Scanning in vendors. Scanning damages. Things  
14 of that nature.

15 Q. Did he talk with you at all about  
16 hiring?

17 A. Yes, he did.

18 Q. He gave you some training on that  
19 as well?

20 A. He gave me the procedure to  
21 recommend that an employee be hired.

22 Q. Did he talk with you about how to  
23 discipline employees at Rite Aid?

24 A. Yes.

25 Q. Did he talk with you at all about

1 how employees would be terminated at Rite Aid?

2 S. Spencer, 7/12/11

3 A. Yes.

4 Q. What did he tell you about that?

5 A. He explained to me that we had no  
6 authority to terminate employees. That we were

7 allowed to document what their violations were  
8 of company policy. And that human resources  
9 would then go ahead with the final outcome.

10 Q. Do you remember if Evan used the  
11 words "partnering with human resources"?

12 A. No.

13 Q. But it was your understanding that,  
14 as a result of your training at Evan's store,  
15 that, as a store manager, if you wanted to  
16 terminate an employee, you would need to make a  
17 recommendation to human resources and then they  
18 would give final approval?

19 A. Yes.

20 Q. Did you ever do that while you were  
21 store manager?

22 A. Yes.

23 Q. Do you remember how many times?

24 A. Quite a few times with specifically  
25 one or two employees.

1 Q. Were your recommendations for  
2 S. Spencer, 7/12/11  
3 termination of those one or two employees  
4 accepted?

5 A. No. Not while I was within their  
6 employment.

7 Q. What do you mean by that?

8 A. Meaning the person that I tried to  
9 have terminated basically the whole year that I  
10 was there, she was terminated right after I was  
11 terminated.

12 Q. Do you know why she was terminated?

13 A. Yes. Based on my documentations  
14 and previous managers' documentations over a  
15 12-year period of insubordination.

16 Q. And a few minutes ago you said you  
17 did have some training after you became a store  
18 manager about special unionized issues?

19 A. Yes.

20 Q. What was that training?

21 A. Training was on how to handle  
22 situations with unionized employees about what  
23 was in their union contract which you were  
24 allowed to do and not allowed to do as a store  
25 manager. About how many write-ups you had to

1 have on an employee.

2 S. Spencer, 7/12/11

3 Q. Do you remember who gave you that  
4 training?

5 A. No. I don't remember his name.

6 Q. As a result of that training, did  
7 you understand as a store manager that the  
8 manner in which you could discipline and  
9 terminate employees at a union store was  
10 different from -- Evan's store, for example?

11 A. Evan's store was unionized.

12 Q. It was unionized?

13 A. Most stores are unionized.

14 Q. So did you have an understanding of  
15 a non-union store, how it worked in terms of  
16 discipline or termination at Rite Aid?

17 A. No. I didn't have any knowledge of  
18 how a nonunion store went about terminating an  
19 employee.

20 Q. And Evan didn't -- even though he  
21 had a union store, he didn't explain to you  
22 about collective bargaining agreement rules with  
23 respect to discipline or termination?

24 A. No. He explained basics about  
25 documenting. About documenting it and keeping



1 preparation.

2 S. Spencer, 7/12/11

3 Q. What did Evan tell you about his  
4 relationship with Josephine; his working  
5 relationship?

6 A. That they had a great relationship.

7 Q. Do you know how often Evan spoke  
8 with Josephine by telephone?

9 A. Pretty much on a daily basis.

10 Q. Did you speak with Josephine on the  
11 telephone while you were a store manager in  
12 training at that store?

13 A. Maybe once.

14 Q. Do you have any idea what she would  
15 call to talk about?

16 A. With Evan?

17 Q. Yes.

18 A. Payroll. Mostly payroll. How my  
19 training was going. Sales. Merchandising.

20 Q. Do you think that Evan devoted  
21 enough time to your training?

22 A. No, I don't.

23 Q. You wish that he had spent more  
24 time on your training?

25 A. Yes. But there were circumstances

1     why he was not able to. Because he was  
2                     S. Spencer, 7/12/11  
3     preparing for the yearly inventory, and that  
4     took a lot of my training time away. And he  
5     admitted as such.

6             Q.     Did he train you about how to  
7     prepare for inventory?

8             A.     Yes. He trained me on that.

9             Q.     As part of your training at  
10    Rite Aid, did you review any policies and  
11    procedures?

12            A.     Yes.

13            Q.     Where were they?

14                   MR. SABA: Objection. Form.

15            A.     Could you repeat that, please?

16            Q.     (By Ms. Barbaree) Where were they,  
17    the policies and procedures that you reviewed?

18            A.     CBT training tapes. Management  
19    seminars. Management meetings. Discussions  
20    with Nancy Virga. Sysms. Daily.

21            Q.     When you say daily sysms, what were  
22    the -- what were the topics of daily sysms that  
23    you recall?

24                   MR. SABA: I'm going to object to  
25            form. Just clarification. Did he say

1 "daily"? Yes? Excuse me.

2 S. Spencer, 7/12/11

3 A. I'm sorry. Could you repeat that?

4 Q. (By Ms. Barbaree) What were the  
5 topic of daily sysms that you can recall?

6 A. Payroll. Payroll reduction. CBT  
7 completions. Merchandising. Your sales figures  
8 for the week. Year-to-date. Meetings.  
9 Conference calls. It was just numerous sysms.

10 Q. As a store manager in training at  
11 Evan's store, did you review the sysms?

12 A. Yes.

13 Q. Why?

14 A. Why? Because I was told that this  
15 is a responsibility of a store manager; to check  
16 your sysms on a daily basis.

17 Q. And so Evan gave you some training  
18 on checking the sysm and then addressing any  
19 issues that you were asked to address in the  
20 sysm?

21 A. Yes.

22 Q. Sometimes you would get sysms about  
23 things like product recalls and things like  
24 that. Do you remember that?

25 A. Yes.

1 Q. And that was something you would

2 S. Spencer, 7/12/11

3 need to take immediate action about in your  
4 store?

5 A. Yes.

6 Q. Did you ever attend any of the  
7 district manager conference calls that Evan had  
8 while you were in training?

9 A. Yes.

10 Q. Did he have weekly district manager  
11 conference calls?

12 A. From what I remember, he -- he had  
13 weekly. Yes. Once a week.

14 Q. And you said that there were also  
15 some management meetings that you attended?

16 A. Yes.

17 Q. Did you attend those while you were  
18 in training and as a store manager?

19 A. No.

20 Q. Just while you were in training?

21 A. I didn't attend any managers'  
22 meetings while I was in training. I was always  
23 at the store.

24 Q. Just as a store manager?

25 A. Yes.

1 Q. And what about -- you referenced  
2 S. Spencer, 7/12/11  
3 management seminars. When did you attend those?

4 A. That could be once every couple of  
5 months or so.

6 Q. Do you remember the topics of any  
7 of the seminars?

8 A. Customer service. The 1199 union.  
9 Daily operations.

10 Q. Once you became a store manager and  
11 you attended management meetings, do you  
12 remember how frequently?

13 A. Managers' meetings, about once a  
14 month.

15 Q. How long were they?

16 A. Anywhere -- it could be anywhere  
17 from seven to eight hours.

18 Q. Did your district manager, once you  
19 became a store manager, have weekly conference  
20 calls?

21 A. More than weekly.

22 Q. How frequently?

23 A. Sometimes two to three times a  
24 week.

25 Q. Do you recall how long Nancy's

1 conference calls typically were?

2 S. Spencer, 7/12/11

3 A. At least an hour.

4 Q. Sometimes longer?

5 A. Yes.

6 Q. How frequently was Nancy in your  
7 store while you were store manager?

8 A. Once or twice a week.

9 Q. And how long did she usually stay?

10 A. She'd stay for hours.

11 Q. And what would she do during the  
12 hours that she was there?

13 A. Give instruction on what she wants  
14 done. Monitor customer service. Monitoring the  
15 facing of the store or non-facing of the store.  
16 Inventory. She would focus on pharmacy issues.

17 Q. Did you have -- I'm sorry. Were  
18 you finished?

19 A. Merchandising, more than anything.

20 Q. And explain to the jury what you  
21 mean by "merchandising."

22 A. She would explain exactly where she  
23 wants this product sold, or what should be on  
24 that end cap. Moving displays around the store.

25 Q. I take it your store had

1 planograms?

2 S. Spencer, 7/12/11

3 A. Yes.

4 Q. Did Nancy ever make changes to the  
5 planograms?

6 A. Very rarely.

7 Q. But there were times that she  
8 changed things around in the store?

9 A. Yes. Depending on the size of your  
10 store. If a planogram was for a 12-foot shelf  
11 and you had an 8-foot shelf there, you would  
12 have to adjust it. She would want you to adjust  
13 it.

14 Q. And you said that she would move  
15 displays around. What do you mean by that?

16 A. Well, if she didn't like the way I  
17 put a display in the store, she would come and  
18 move it somewhere else. If she didn't like the  
19 product I had on the front end cap of the store,  
20 because I think that that product would sell in  
21 that neighborhood, she would instruct me to move  
22 it.

23 Q. But as a store manager at Rite Aid,  
24 you tried to make decisions about where to place  
25 merchandise that you thought would sell best in

1 your store?

2 S. Spencer, 7/12/11

3 A. Yes. I tried.

4 Q. And there were times that she  
5 overruled your merchandising plans?

6 A. Yes.

7 Q. Did you ever, as a store manager at  
8 Rite Aid, ask for product that had not  
9 previously been in your store?

10 A. Yes.

11 Q. And what happened?

12 A. And I was denied.

13 Q. What did you ask for?

14 A. For a certain type of drinks to be  
15 sold in the store. Because it was a West Indian  
16 type of neighborhood. And I thought that it  
17 would sell at that store. But she told me  
18 that's not in the -- it's not in the profit  
19 planner. It's not in the planogram. So you  
20 cannot sell it.

21 Q. Do you know if the drinks that you  
22 were looking for were available from the store's  
23 current vendors?

24 A. Yes.

25 Q. They were?



1 A. Yes.

2 S. Spencer, 7/12/11

3 Q. Who were the vendors that serviced  
4 your store while you were store manager?

5 A. Pepsi. Coke. Frito-Lay.  
6 Entenmann's. That's the ones that I recall  
7 right now.

8 Q. Did you have dairy products in your  
9 store?

10 A. Yes.

11 Q. And who provided those?

12 A. Beyer Farms. B-e-y-e-r. Beyer  
13 Farms.

14 Q. Was there a magazine vendor?

15 A. Yes. Hudson News.

16 Q. Hudson News?

17 A. Yes.

18 Q. When you had a vendor come to your  
19 store, was it required that a member of  
20 management work with the vendor?

21 A. Yes. In theory.

22 Q. What do you mean by "in theory"?

23 A. What I mean by "in theory" is the  
24 manager is supposed to work with that vendor and  
25 scan in their merchandise. But at times we were

1 MR. SABA: Objection. Form.

2 S. Spencer, 7/12/11

3 A. I feel it was my responsibility,  
4 yes. Customer safety was my responsibility.  
5 Yes.

6 Q. (By Ms. Barbaree) Did you think  
7 that the leaks were a safety issue?

8 A. Yes.

9 Q. Were they actually in the store?  
10 Or in the back room of the store?

11 A. They were in the area of customers.  
12 From the air-conditioning above, from the roof.

13 Q. Did that happen more than once?

14 A. Yes.

15 Q. You would have to put buckets out  
16 and mark off areas?

17 A. Yes.

18 Q. Did it actually get repaired more  
19 than once as well?

20 A. To my knowledge, it happened a  
21 couple of times while I was there. But I was  
22 told by my assistant manager that it was an  
23 ongoing problem for years.

24 Q. Do you know if that store was an  
25 Eckerd store before?

1 A. No, it wasn't.

2 S. Spencer, 7/12/11

3 Q. It wasn't? It was built as a  
4 Rite Aid store?

5 A. Yes.

6 Q. What competitors were close to that  
7 location?

8 A. Family Dollar. Duane Reade was  
9 across the street.

10 Q. I think I asked you about the hours  
11 at the training store that you were in. What  
12 were the store hours at your store?

13 A. 8:00 a.m. -- Monday to Friday.  
14 8:00 a.m. to 9:00 p.m.

15 Saturday, 8:00 a.m. -- sorry.  
16 Saturday, also 8:00 a.m. to 9:00 p.m.

17 Sunday, 9:00 a.m. until 8:00 p.m.

18 Q. Who prepared employee schedules at  
19 3855?

20 A. I, as the store manager, input the  
21 information on the employees. And the computer  
22 generated the schedule.

23 Q. And once the computer generated the  
24 schedule for you, did you ever make changes to  
25 that schedule?

1           A.       I was doing that for a period of  
2                    S. Spencer, 7/12/11  
3   time.

4 Q. And then, I would assume, that  
5 there were some times where you had to make a  
6 change to a schedule because something  
7 unforeseen happened; where an employee called  
8 out, or something like that?

9                    A.        Yes.

10 Q. And when you say "I was doing that  
11 for a period," what do you mean?

12           A.       I was instructed not to make the  
13       schedule with edits anymore; to go with the  
14       schedule that the computer would generate based  
15       on the employee's availability and the peak  
16       hours of the store.

17 Q. And who gave you that instruction?

18 A. Nancy Virga, district manager.

19 Q. While you were the store manager at  
20 3855, did the scheduling software change?

21           A.     Not that I recall.

22 Q. And so did Nancy say to you that  
23 the store scheduling software was actually  
24 making sure that you had the right coverage  
25 during peak hours?

1 A. Yes. That's what she told me.

2 S. Spencer, 7/12/11

3 Q. What were the changes that you had  
4 been making to the schedule?

5 A. The changes I was making to the  
6 schedule were based on -- the busiest time of  
7 the store was in the evening. And the computer  
8 was generating a schedule that was putting more  
9 people in the daytime.

10 Q. When you made changes to the  
11 schedule during the week because of an employee  
12 calling out, for example, would you just  
13 handwrite on the schedule that was posted?

14 A. I did both. I changed it in the  
15 computer, and I changed it handwritten also.

16 Q. Were there times that you didn't  
17 change the schedule but you knew that employees'  
18 schedules had changed?

19 A. Yes.

20 Q. So sometimes it wouldn't be  
21 reflected on either the computer based or a  
22 handwritten schedule?

23 A. Yes.

24 Q. Did your co-manager ever work on  
25 employee scheduling?

1     them to handle, then they referred it back to  
2                     S. Spencer, 7/12/11  
3     me.

4             Q.     How did you deal with customer  
5     complaints that came to your attention?

6             A.     Rite Aid requires that you call the  
7     customer. Their name and phone number is in the  
8     computer. You're required to call up that  
9     customer. You first identify what the complaint  
10    was about. Call up that customer. Try to  
11    resolve the complaint which ever way you can.

12            Q.     What if the customer is in the  
13    store?

14            A.     Oh. Well, I would listen to what  
15    their complaint was, apologize, and try to  
16    resolve it.

17            Q.     Now, you said with respect to the  
18    manager's schedule that you were working at some  
19    periods five days a week, at some times six days  
20    a week. Did you always work opening? Or did  
21    you both open and close?

22            A.     I was mostly closing the store,  
23    which was my preference; because the store was  
24    busier at night. But I was then forced to open  
25    the store five days a week by Nancy Virga.

1 Q. When did Nancy force you to start  
2 S. Spencer, 7/12/11  
3 opening five days a week?

4 A. I'd say the last three, last three  
5 to four months that I was there.

6 Q. So was this conversation after the  
7 February conversation you told me about?

8 A. Yes.

9 Q. And what did she say in the  
10 conversation about opening?

11 A. She explained to me that I was not  
12 getting my managerial duties completed by  
13 working later in the day when the store is busy,  
14 because I'm on the cash register. So she felt  
15 that I would have more time in the morning when  
16 it's less busy, say between the hours of  
17 8:00 and 10:00, to get managerial duties done.  
18 That's why she was forcing me to work in the  
19 morning.

20 Q. What were the managerial duties  
21 that Nancy told you she thought you were not  
22 completing?

23 A. Read all sysms. Complete  
24 Work Force employee scheduling on time.

25 Checklists that had to be done. CBTs. Pulling

1 expired merchandise. Scanning damaged

2 S. Spencer, 7/12/11

3 merchandise.

4 Q. And when you changed to opening  
5 five days a week, were you able to get these  
6 managerial duties done?

7 A. No. Not consistently. No.

8 Q. Did you think that you were able to  
9 get more of them done than you had been able to  
10 get done when you were closing?

11 A. Yes.

12 Q. And did you work that five-day  
13 opening schedule until you left Rite Aid?

14 A. Yes.

15 Q. So you never changed back to  
16 working more closing shifts?

17 A. No. She wouldn't allow it.

18 Q. So let's talk about the closing  
19 shift for a minute and tell me what you recall  
20 the closing manager's responsibilities were.

21 A. Closing manager's responsibilities  
22 are to count out all of the cash, make deposits,  
23 make sure that the store is completely,  
24 100 percent, faced, cleaned, restocked. That  
25 was basically it.



1 Q. When you were working as a closing  
2 S. Spencer, 7/12/11  
3 manager, would you leave notes to your assistant  
4 manager as to what you would want done in the  
5 morning?

6 A. Yes.

7 Q. When you came in as the closing  
8 manager, would you typically meet with the  
9 employees who were working?

10 A. Would you repeat that?

11 Q. When you came in as a closing  
12 manager -- first of all, let me ask you this.  
13 What time did you come in when you were closing?

14 A. 12:00.

15 Q. Noon?

16 A. 11:00 to 9:00 -- no. 11:30 to 9:30  
17 or 11:00 to 10:00. It took me about an hour.

18 Q. So when you came in at 11:00 or  
19 11:30, did you get the employees together to  
20 talk with them about what you wanted to  
21 accomplish on the shift?

22 A. Sometimes yes. Sometimes no.

23 Q. And you just decided whether you  
24 needed to talk with them or not. Right?

25 A. Yes. Sometimes it's only one

1 employee there. She's on the register. And

2 S. Spencer, 7/12/11

3 there's no time to talk to her.

4 Q. And would you talk with the other  
5 manager who had opened the store --

6 A. Yes.

7 Q. -- when you got there? And you  
8 would talk with him about whether he had made  
9 certain work assignments?

10 A. Yes.

11 Q. So when you were the opening  
12 manager, what were your responsibilities for  
13 opening the store?

14 A. If -- to restock, if it wasn't  
15 completed the night before. Count the  
16 registers. Count the safe. Pull expired  
17 merchandise. You handle a lot of vendors in the  
18 morning. Bringing in product. Help out pack  
19 out, the delivery. And help out on the cash  
20 register.

21 Q. Well, let's start with the minute  
22 you get there as the opening manager. You  
23 unlock the doors. Right?

24 A. Yes.

25 Q. Enter the safe -- I mean enter the

1 code information?

2 S. Spencer, 7/12/11

3 A. Yes.

4 Q. Did you walk around the store?

5 A. Yes.

6 Q. For what purpose?

7 A. To -- you do a walk-through of the  
8 store to see the condition of the store left  
9 from the night before. What needs to be  
10 addressed right away. What needs to be stocked  
11 up. You're really checking the condition of the  
12 store from the night before.

13 Q. Did you make any notes while you  
14 were doing that?

15 A. Yes.

16 Q. And then would you use those notes  
17 to make assignments to the employees who were  
18 working that day?

19 A. Yes.

20 Q. Did you typically give the  
21 assignments to the employees in writing, or just  
22 tell them when they got there?

23 A. I would document what I wanted  
24 done. And then I would tell it to the  
25 employees.

1 Q. So you would make your own

2 S. Spencer, 7/12/11

3 document, but then you would verbally tell the  
4 employees?

5 A. Yes.

6 Q. And would you say to the employees,  
7 "I want you to get this done first. And then,  
8 if you have time, then also do this and this"?

9 A. Yes.

10 Q. I'm guessing there were times you  
11 worked alongside the employees. When they were  
12 stocking, for example?

13 A. You mean in the daytime?

14 Q. Sure. Any time.

15 A. Yes.

16 Q. There were times when you stocked  
17 on the floor, along with other employees.  
18 Right?

19 A. Yes.

20 Q. And you understood that, even when  
21 you were stocking on the floor, you were still  
22 responsible for the overall operations of the  
23 store. Correct?

24 A. Yes. I was still being held  
25 responsible. Yes.

1 Q. And you were still supervising the  
2 S. Spencer, 7/12/11  
3 employees?

4 A. I couldn't properly supervise the  
5 employees.

6 Q. What do you mean, you couldn't  
7 properly?

8 A. If I'm on a register, I cannot --  
9 in a huge store, like which is 3855, I cannot  
10 monitor what employees are doing if I'm stuck on  
11 a register or if I constantly have to stock  
12 shelves, if I have to constantly clean up the  
13 back room or scan damages. Because there's no  
14 employees there to do it.

15 Q. When you say a "huge" store, you  
16 couldn't see the entire store from the front  
17 registers?

18 A. No.

19 Q. How big is it?

20 A. It was -- it had 12 aisles. I  
21 can't remember the exact square footage of the  
22 store. But it was a large store. It had  
23 12 aisles.

24 Q. Were there mirrors that let you see  
25 all the aisles from the front?

1 A. No.

2 S. Spencer, 7/12/11

3 Q. No?

4 A. No.

5 Q. Where was your office?

6 A. My office, which is in every  
7 Rite Aid, is located within the photo lab.

8 Q. Did I ask you if you had a photo  
9 supervisor at your store?

10 A. No, you did not.

11 Q. Did you have one?

12 A. No.

13 Q. Did you have employees who only  
14 worked in photo?

15 A. No.

16 Q. Was your photo machine working  
17 while you were the store manager?

18 A. Yes.

19 Q. The whole time?

20 A. The majority of the time.

21 Q. There were times when you had to  
22 call a vendor to repair the photo machine as  
23 well?

24 A. Yes.

25 Q. Did you have certain hours that the

1 Q. A key holder?

2 S. Spencer, 7/12/11

3 A. Yes.

4 Q. And what was the purpose of  
5 register audits?

6 A. To check overage, shortages at any  
7 given time, to see if there was improper cash  
8 handling by the cashiers. If there was possible  
9 theft. If it was just bad cash handling. It  
10 may not necessarily be theft. It could be just  
11 bad cash handling by a cashier.

12 Q. So were there times that you would  
13 be doing one thing and you would stop and go do  
14 the register audit and then come back to  
15 whatever you had been doing before?

16 A. Yes.

17 Q. Did you carry a cell phone in the  
18 store?

19 A. Yes.

20 Q. Did employees call your cell phone?

21 A. No.

22 Q. They would just page you over the  
23 intercom?

24 A. Yes.

25 Q. Would you say that, to be an

1 effective store manager at a Rite Aid store, you

2 S. Spencer, 7/12/11

3 have to be able to multitask?

4 A. Yes.

5 Q. You're often doing many things at  
6 the same time?

7 A. Yes.

8 Q. And one of the things that you're  
9 supposed to be doing is supervising the  
10 employees at all times that you're in the store.  
11 Correct?

12 A. Yes.

13 Q. Is a store manager the highest  
14 ranking employee in the store?

15 A. Yes.

16 Q. As a store manager, did you feel  
17 that you were in charge of your store?

18 A. No.

19 Q. Why not?

20 A. Because the majority of the  
21 decisions that were made were made by the  
22 district manager. Also, everything was dictated  
23 that you had to do through CBTs, through  
24 planograms. You were not allowed to make these  
25 decisions on your own.



1 Q. While you were working for  
2 S. Spencer, 7/12/11

3 Duane Reade were there CBTs?

4 A. No.

5 Q. What are CBTs?

6 A. It's a training -- I can't remember  
7 the exact wording for CBT. But it's a training  
8 tool. A tape you watch on a computer for  
9 whatever specific task that they want you to do.

10 Q. How often did you watch CBTs while  
11 you were a store manager?

12 A. Almost on a daily basis.

13 Q. Were other employees in the store  
14 required to watch the same CBTs?

15 A. Not always the same. There were  
16 some for management. And there were some for  
17 staff. And then there were some that we all  
18 watched.

19 Q. About how long were the CBTs that  
20 you were watching almost daily?

21 A. The times varied. It could be ten  
22 minutes for one. An hour and a half for another  
23 one.

24 Q. And if it was an hour-and-a-half  
25 CBT, would you set aside a special time to watch

1 that?

2 S. Spencer, 7/12/11

3 A. I tried to.

4 Q. Were there times that you just  
5 didn't finish watching them?

6 A. Yes.

7 Q. Were there times you didn't watch  
8 them at all?

9 A. Yes.

10 Q. Did Duane Reade have planograms?

11 A. Yes.

12 Q. What is your understanding of why  
13 retailers have planograms?

14 A. To maximize sales on a particular  
15 item.

16 Q. Was the way you handled planograms  
17 at Duane Reade any different from the way you  
18 handled planograms at Rite Aid?

19 A. I really was not required to do  
20 planograms at Duane Reade.

21 Q. When you say "do planograms," what  
22 do you mean?

23 A. To execute the planograms at  
24 Duane Reade. As a store manager, I didn't  
25 really have that responsibility. I delegated

1 A. They would be working opening

2 S. Spencer, 7/12/11

3 shift, midday, closing.

4 Q. All three?

5 A. Yes.

6 Q. Would your shift typically overlap  
7 with your co-managers?

8 A. Yes.

9 Q. So you said in February of 2010, I  
10 think you said that you were typically working  
11 the closing shift. Correct?

12 A. Yes.

13 Q. And you would come in around what  
14 time?

15 A. 11:00.

16 Q. Until?

17 A. 10:00.

18 Q. And when did your co-manager work  
19 when he was working the opening shift?

20 A. He would work from 8:00 a.m. until  
21 5:00 or 6:00 at that time.

22 Q. What about pharmacy techs? When  
23 did they come in?

24 A. 8:00 a.m.

25 Q. And they stayed until 9:00 p.m.?

1 A. No. They did eight-hour shifts.

2 S. Spencer, 7/12/11

3 Q. Well, I meant there was a pharmacy  
4 tech there between 8:00 a.m. and 9:00 p.m.?

5 A. Yes. Yes.

6 Q. At least one?

7 A. Yes.

8 Q. Were there sometimes two?

9 A. Yes. Sometimes three.

10 Q. So if that's the typical schedule  
11 that you recall from 2010, at what point did the  
12 number of employees change?

13 A. It started gradually -- I'd say  
14 around that summer, that summer of 2010,  
15 gradually the payroll dollar amount was reduced.

16 Q. Do you recall how you would change  
17 your schedule?

18 A. I just omitted employees from  
19 shifts.

20 Q. Do you remember which shifts?

21 A. Yes. The evening. It had to be  
22 the evening shift. Because you only had one  
23 person in the morning at all times.

24 Q. And so when you had that opening  
25 person -- I assume that was a cashier at

1 8:00 a.m.?

2 S. Spencer, 7/12/11

3 A. Yes.

4 Q. Would you also have a shift  
5 supervisor there at 8:00 a.m.?

6 A. No.

7 Q. No?

8 A. No.

9 Q. I thought you said you had an  
10 opening midday and closing?

11 A. If I opened or my co-manager  
12 opened, that shift is not going to be there.  
13 That shift would probably be closing.

14 Q. Well, either you -- strike that,  
15 because I may be making an assumption.

16 Was either you or your co-manager  
17 there at all times?

18 A. No.

19 Q. So your shift sometimes opened and  
20 closed as well?

21 A. Yes.

22 Q. And how did you figure out how  
23 often the shift would overlap with either you or  
24 the co-manager?

25 A. It depends on if it was a delivery

1 A. Yes.

2 S. Spencer, 7/12/11

3 Q. What types of things?

4 A. To do the employee schedule. To  
5 close the store. Get out of the store more  
6 efficiently. To leave the store in better  
7 condition the night before. I found it was  
8 easier to do these things as I was developing.  
9 Because at that time I was fully staffed.

10 Q. Were there any things that you  
11 realized with more experience as a Rite Aid  
12 store manager that you needed to spend more time  
13 on then you had been earlier?

14 A. Yes. Yes.

15 Q. What were the things you realized  
16 you needed to spend more time on, as you got  
17 more experienced?

18 A. Working on the seasonal aisle. The  
19 seasonal aisle.

20 Q. Did you realize that the seasonal  
21 aisle had a greater impact on the store's  
22 profitability?

23 A. Yes.

24 Q. What would you say the strengths of  
25 your district manager, Nancy, were, if any?

1 A. She's very -- she's very dedicated.

2 S. Spencer, 7/12/11

3 She's -- she's a hard driving -- you know. She  
4 pushes. She pushes managers to get -- you know.  
5 To try to get the best out of them.

6 Q. Would you say that she was a  
7 micromanager?

8 A. Yes.

9 Q. Did you have enough experience  
10 working with Josephine to say what her strengths  
11 were as a district manager?

12 A. I didn't work with Josephine.

13 Q. Except when you were in the  
14 training store?

15 A. Yes. And I only saw her two days  
16 in three months.

17 Q. Did anyone ever say to you that  
18 Josephine was a micromanager?

19 A. No. I was told she was the  
20 opposite. I witnessed that she was the  
21 opposite.

22 Q. What would you say Nancy's  
23 weaknesses were as a district manager?

24 A. Basically, it's her way -- she's  
25 not flexible about listening -- she's not

1 flexible about listening to managers.

2 S. Spencer, 7/12/11

3 Q. Any other weaknesses she had?

4 A. She's not understanding about if  
5 you might have a personal problem.

6 Q. Did you have personal problems  
7 while you were a store manager at Rite Aid?

8 A. Yes.

9 Q. What types of personal problems?

10 A. My sister -- my sister got in a car  
11 accident. She lost her leg. So at times -- you  
12 know. She lives in my building. At times I was  
13 helping her out early in the morning, you know,  
14 to get dressed or to get her to rehabilitation.  
15 And that's one reason why I preferred --

16 (Interruption by phone.)

17 A. That's one reason why I preferred  
18 to close the store, so I could help my sister  
19 out in the mornings.

20 When I tried to explain this to  
21 Nancy, that opening the store every day was not  
22 feasible for me for that reason, she didn't want  
23 to hear about it. She told me I'm the store  
24 manager. She wants me there in the morning.

25 Q. Was your sister actually injured



1 had a problem anywhere before I've worked with  
2 S. Spencer, 7/12/11  
3 how I handle employees. I'm firm but fair with  
4 employees.

5 Evan had at least ten years of  
6 Rite Aid management experience. So it's really  
7 hard for me to compare myself with him, as far  
8 as knowledge. You know. But as far as his  
9 overall management style, we're very different.

10 Q. While you were a store manager at  
11 3855, did you assign certain areas of the store  
12 to certain employees?

13 A. I didn't assign it, because it was  
14 already predetermined before I was there.

15 Q. So that was already in place when  
16 you got there?

17 A. Yes. But I was asked by -- I was  
18 asked by Nancy to cease that policy and stop  
19 having one employee work Aisle 8 and this  
20 employee work Aisle 9, which I did.

21 Q. Was that effective, that change?

22 A. I don't think so. No.

23 Q. You thought it was better for them  
24 to have an assigned aisle or area?

25 A. Yes. Yes.

1 Q. While you were a store manager at  
2 S. Spencer, 7/12/11  
3 3855, do you know what your highest weekly sales  
4 volume was?

5 A. I think it was in the area of  
6 \$66,000, \$67,000. The front end.

7 Q. And do you know what the average  
8 front-end annual sales were for 3855 while you  
9 worked there?

10 A. The annual?

11 Q. Yes.

12 A. I don't recall that.

13 Q. Was it profitable?

14 A. It was profitable.

15 Q. And as a store manager, was it your  
16 goal to make it as profitable as possible?

17 A. Yes, it was.

18 Q. Is it fair to say that you were  
19 always in charge when you were in the store,  
20 regardless of what duties you were performing?

21 MR. SABA: Objection. Form.

22 A. No. I would not agree with that.

23 Q. (By Ms. Barbaree) Why wouldn't you  
24 agree with that?

25 A. Because it was being dictated to me

1 what I would do as a store manager, what I would  
2 S. Spencer, 7/12/11  
3 sell, what pricing it would be, where to  
4 merchandise certain items, what to do with  
5 employees, how they wanted -- how customer  
6 complaints were to be handled. So I do not feel  
7 I was in charge.

8 Q. Are you saying that Nancy gave you  
9 instruction on how to handle customer  
10 complaints?

11 MR. SABA: Objection. Form.

12 A. Yes, she did.

13 Q. (By Ms. Barbaree) What kind of  
14 instruction did she give you about that?

15 A. To go into the computer, look up  
16 the customer's name and phone number, and call  
17 the customer, and basically apologize whether or  
18 not it was something -- I could have been off  
19 that day. But, basically, apologize and fix the  
20 problem.

21 Q. Was that something you had learned  
22 during your training as well; about how to  
23 handle customer complaints?

24 A. That's something I've known  
25 wherever I've worked. It just was never handled

1 in that manner.

2 S. Spencer, 7/12/11

3 Q. So if you were in the store, are  
4 you saying that there was someone else in the  
5 store who was in charge instead of you?

6 MR. SABA: Objection. Form.

7 A. Could you repeat that, please?

8 Q. (By Ms. Barbaree) Sure. If you  
9 were in the store at 3855 as the store manager,  
10 are you saying that there was someone else in  
11 the store who was in charge instead of you?

12 MR. SABA: Objection. Form.

13 A. I was the highest ranking person in  
14 the store at the time. But I was not the one in  
15 charge of the store.

16 Q. (By Ms. Barbaree) And if you  
17 weren't in the store, would you say that your  
18 co-manager was the highest ranking employee in  
19 the store?

20 A. Yes.

21 Q. Assuming he was there?

22 A. Yes.

23 Q. Would you say that, when you  
24 weren't in the store, your co-manager was in  
25 charge?

1 anyone in upper management.

2 S. Spencer, 7/12/11

3 Q. (By Mr. Saba) Okay. Now, how did  
4 the duties and responsibilities at Thriftway  
5 compare to your duties and responsibilities at  
6 Rite Aid?

7 A. I was allowed to run the store at  
8 Thriftway as if it was my own business. I was  
9 fully responsible for the profitability of the  
10 store. I made all decisions as far as what I  
11 wanted to sell, how I wanted to merchandise what  
12 was sold in the store. I was fully responsible  
13 for everything. And I had no one -- I had no  
14 one dictating to me how to run the store.

15 Q. Okay. Ms. Barbaree asked you a lot  
16 about the duties that you were responsible for  
17 at Rite Aid as a store manager.

18 A. Yes.

19 Q. What non-managerial duties did you  
20 also have to perform at Rite Aid?

21 MS. BARBAREE: Objection to form.

22 A. Cleaning of the store.

23 MR. SABA: Go ahead.

24 A. Cleaning the store. Working the  
25 cash register the majority of my shifts.

1 Packing the shelves. Those were the main  
2 S. Spencer, 7/12/11  
3 responsibilities, non-managerial, that I had to  
4 perform at Rite Aid.

5 Q. (By Mr. Saba) And on average, what  
6 percentage of your work per week did you spend  
7 doing these non-managerial duties?

8 MS. BARBAREE: Objection to form.

9 A. I spent half to three quarters of  
10 my time doing non-managerial tasks.

11 Q. (By Mr. Saba) Do you feel that  
12 performing these non-managerial tasks made you  
13 any less responsible as a-- let me ask it this  
14 way: Do you feel that, in engaging in these  
15 non-managerial tasks, you were any less  
16 responsible for your managerial duties?

17 MS. BARBAREE: Objection to form.

18 A. No. I was still responsible for  
19 all of my managerial duties.

20 Q. (By Mr. Saba) Do you feel that you  
21 were properly compensated for doing those  
22 duties?

23 MS. BARBAREE: Objection to form.

24 A. No, I don't.

25 Q. (By Mr. Saba) Okay. When did you

1 decide to become a plaintiff in this lawsuit?

2 S. Spencer, 7/12/11

3 A. After I was contacted through the  
4 mail.

5 Q. Do you know what date that was?

6 A. I don't remember. I don't remember  
7 the date.

8 Q. And do you have an approximate date  
9 on when you elected to opt in?

10 A. Whatever the last day was, the  
11 cut-off date, that's the date that I came into  
12 the class action suit.

13 Q. And were you still an employee at  
14 Rite Aid?

15 A. Yes, I was.

16 Q. How soon after you made the  
17 decision to opt in were you terminated from  
18 Rite Aid?

19 A. I'd say within a four- to  
20 five-month period.

21 Q. And do you believe your termination  
22 was fair?

23 A. No.

24 Q. Why?

25 A. I was terminated for job

1 STATE OF NEW YORK )

2 : ss

3 COUNTY OF )

4

5 I, STEPHEN F. SPENCER, hereby certify

6 A C K N O W L E D G M E N T

7 that I have read the transcript of my testimony

8 taken under oath in my deposition of July 12,

9 2011; that the foregoing transcript is a true,

10 complete, and correct record of my testimony;

11 and that the answers on the record as given by

12 me are true and correct.

13

14

\_\_\_\_\_  
STEPHEN F. SPENCER

16

17 Signed and subscribed to before me

18 this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

19

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\_\_\_\_\_  
NOTARY PUBLIC

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# Exhibit JJJ

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Diana Nadas Roloff, CCR, RPR  
License No. 90012

1 speed. What do you mean? What was wrong with the  
2 ordering at Store 7290 when you became the store  
3 manager?

4 A. Well, they had a lot of holes in the  
5 shelves and no -- no product.

6 Q. So somebody had not been ordering  
7 product that was needed?

8 A. Exactly.

9 Q. And does that also affect the store's  
10 profitability?

11 A. Yes, ma'am.

12 Q. Were there any other challenges that you  
13 had to deal with when you became the store manager  
14 at 7290?

15 A. That's it, that I know of.

16 Q. So what types of things did you do to  
17 get that store into better shape upon becoming the  
18 store manager there?

19 MS. SCOTT:

20 Objection form.

21 THE WITNESS:

22 I had to -- to work excessive hours to  
23 get it straight and the ordering.

24 BY MS. MOELLER:

25 Q. That took you more time?

1 A. Exactly.

2 Q. Okay. So when you became the store  
3 manager at 7290, were you working longer hours  
4 than you had been as the store manager at the  
5 Bogalusa store location?

6 A. Yes, ma'am.

7 Q. At the Bogalusa store, how many hours  
8 did you work, on average, in a week?

9 A. Oh, when I was on salary?

10 Q. Yes. As a store manager, yes.

11 A. Oh, it's about the same, to be honest,  
12 because I was working 60 to 80 hours a week.

13 Q. That's a Bogalusa?

14 A. Yes, ma'am.

15 Q. And when you became the store manager at  
16 7290 in Slidell, how many hours a week did you  
17 work?

18 A. I probably worked about 80.

19 Q. And that's because of the shape that the  
20 store was in when you took over?

21 A. Yes, ma'am.

22 Q. And did that change at any point during  
23 your employment as the store manager at that  
24 store?

25 A. Well, I was the only salaried person.

1 And then, when the budget cuts came, that's when I  
2 had to start working a lot more.

3 Q. I'm sorry. Let me make sure I  
4 understand. When the budget cuts came, you had to  
5 work more?

6 A. Uh-huh.

7 Q. Because you were still salaried, at that  
8 time?

9 A. Yes, ma'am.

10 Q. When did the budget cuts happen?

11 A. Oh, I don't know. I can't remember.

12 Q. That's when you were the store manager  
13 at 7290?

14 A. Yes, ma'am.

15 Q. And what -- what was the nature of the  
16 budget cuts?

17 A. Well, it was being cut all -- even when  
18 I was at 7287, it was being cut. But when it got  
19 to 7290, it got cut even more.

20 Q. And that's the labor budget,  
21 specifically?

22 A. Well, no. I think it was because of the  
23 profitability.

24 Q. So if the store's profitability went  
25 down, then the labor budget went down?

1 MS. SCOTT:

2 Objection.

3 THE WITNESS:

4 Yeah.

5 BY MS. MOELLER:

6 Q. How many people would you estimate you  
7 hired at the Bogalusa store?

8 A. About the same.

9 Q. Five to ten?

10 A. Five to ten.

11 Q. And so when you arrived as the store  
12 manager at 7290 and the assistant manager had  
13 already hired the eight people, roughly; is that  
14 correct?

15 A. Yes, ma'am.

16 Q. Were you responsible for training those  
17 eight people?

18 A. Yes, ma'am.

19 Q. So she didn't train those people because  
20 she left; correct?

21 A. Exactly.

22 Q. So you had to take them through all of  
23 the new-hire orientation and things of that  
24 nature?

25 A. Yes, ma'am.

1 Q. What other types of things did you train  
2 those persons on?

3 A. Planograms and the register, stocking,  
4 photo lab.

5 Q. Anything else?

6 A. That's about it.

7 Q. Were you responsible for training those  
8 persons on, like, all of Rite Aid's policies?

9 A. Yes, ma'am. Make sure they did their  
10 CBTs, understood them.

11 Q. That's the computer-based  
12 training that --

13 A. Yes, ma'am.

14 Q. -- we talked about?

15 A. Yes, ma'am.

16 Q. During the time that you worked as the  
17 store manager at 7290, was there a particular  
18 schedule that you worked in a given week?

19 A. Well, two -- I worked two nights and the  
20 rest, days.

21 Q. Does that mean you closed two nights,  
22 per week?

23 A. Yes, ma'am.

24 Q. How many days a week did you generally  
25 work as a store manager at 7290?

1 A. Five.

2 Q. And so you --

3 A. Was that -- you're talking about salary  
4 or hourly?

5 Q. Yes. Let's talk about it just during  
6 the time you were salaried.

7 A. Oh, I worked, sometimes, seven -- seven  
8 days a week.

9 Q. And during the time that you were an  
10 hourly manager, store manager, at 7290, how many  
11 days a week did you work?

12 A. As hourly, five.

13 Q. So during the time you were salaried at  
14 7290, you worked -- did you close two nights, per  
15 week?

16 A. Yeah, supposed to be. But I wound up  
17 closing a lot more than that.

18 Q. What was the reason for that?

19 A. Oh, I guess, budget cuts.

20 Q. And how many days did you open during  
21 the time that you were a salaried store manager at  
22 7290?

23 A. Oh, I want to say five -- it was five or  
24 six or -- sometimes, I closed -- opened and  
25 closed.



1 Q. At Store 7290, were there certain times  
2 during the day where there were more people on  
3 duty than others, like, the times that the store  
4 got busier?

5 MS. SCOTT:

6 Objection form.

7 THE WITNESS:

8 Well, all day long, it was, kind of,  
9 busy at 7290.

10 BY MS. MOELLER:

11 Q. How many hourly employees would there be  
12 with you --

13 A. Oh, just --

14 Q. Let's say you opened the store as a  
15 salaried store manager at 7290 --

16 A. Uh-huh.

17 Q. -- how many hourly employees would be in  
18 the front-end of the store?

19 A. One.

20 Q. And, then, did an additional person come  
21 in?

22 A. They would work from 8:00 to 3:00, and  
23 an additional person would come in from 3:00 to  
24 10:00.

25 Q. And then there were additional people

1 A. Yes.

2 Q. And that store managers have the  
3 discretion to subordinate hourly employees when  
4 it's necessary?

5 A. What do you mean?

6 Q. If you saw a situation where an hourly  
7 employee at your store had violated some type of  
8 policy, you had the discretion to discipline that  
9 employee?

10 A. Yes.

11 Q. Okay. And you could verbally discipline  
12 them, or you could discipline them in writing;  
13 correct?

14 A. Yes.

15 Q. As a store manager, did you have the  
16 discretion to suspend an employee if circumstances  
17 warranted it?

18 A. Suspend?

19 Q. Yes.

20 A. I would have to go through -- I'd have  
21 to go over it with John Perkins, my DM.

22 Q. Did you ever have a situation that you  
23 felt warranted the suspension of an employee?

24 A. Well, yeah. That was my assistant, at  
25 the time, that was stealing.

1 Q. And you believed that -- was that a male  
2 or a female?

3 A. Male.

4 Q. And you believed that he should be  
5 suspended?

6 A. Well, they terminated him.

7 Q. Okay. Was he suspended pending his  
8 termination?

9 A. Yes.

10 Q. And did you recommend that he be  
11 suspended during that period of time?

12 A. I had no control over that.

13 Q. You weren't involved in that?

14 A. Unh-unh.

15 Q. Was there any other situation where you  
16 believed an employee should have been suspended?

17 A. No.

18 Q. As a store manager, if an employee  
19 committed, like, a major violation, for example,  
20 fighting at work or bringing drugs to work, did  
21 you have the authority to terminate that employee,  
22 on the spot?

23 A. Well, within cause, yes.

24 Q. I'm sorry?

25 A. Within cause, yes. But I would have to

1 go over it with my boss, John Perkins.

2 Q. So, for example, let's just take a  
3 hypothetical. Let's say you caught an employee at  
4 work with drugs.

5 A. Right.

6 Q. You could go ahead and send that  
7 employee home or terminate --

8 A. I'd send him home, talk to my boss, and  
9 then get Loss-Prevention, and they'd review  
10 everything.

11 Q. And that's to ensure that all employees  
12 are treated the same?

13 A. Yeah.

14 Q. And you understood that you had that  
15 authority?

16 A. Yes.

17 Q. Did you ever have to do that? Did you  
18 have a situation that warranted that?

19 A. I'm not -- what do you mean, "a  
20 situation --"

21 Q. Where an employee needed to be  
22 terminated, on the spot?

23 A. Yes. That was an assistant.

24 Q. He was stealing?

25 A. Yes.

1 Q. Any other time?

2 A. That was it.

3 Q. Did you ever have to discipline an  
4 employee for attendance issues?

5 A. Oh, I'm trying to remember. No, not  
6 that I know. I can't remember, though.

7 Q. During the time you were a store  
8 manager, did you ever have to discipline an  
9 employee for dress-code violations?

10 A. I'm to trying think who that is. I  
11 know that -- I think it was one time I did have  
12 to, yes.

13 Q. And do you recall what type of  
14 discipline? Was it verbal or written?

15 A. It was written.

16 Q. Did you ever have to discipline an  
17 employee for insubordination?

18 A. What do you mean?

19 Q. Let's say they talked back to you or had  
20 an attitude?

21 A. No.

22 Q. You never had such a situation?

23 A. Unh-unh.

24 Q. But you knew that you had the authority  
25 to do so?

1 A. That's it.

2 Q. Mr. Tardo, have you understood all of my  
3 questions today, or if you've not understood,  
4 you've let me know?

5 A. Yes, ma'am.

6 Q. And has your testimony been accurate and  
7 complete?

8 A. Yes, ma'am.

9 MS. MOELLER:

10 All right. I don't have any further  
11 questions, at this time.

12 MS. SCOTT:

13 If I could just have ten minutes off the  
14 record?

15 MS. MOELLER:

16 Sure. Off the record.

17 (A brief off-the-record recess is held  
18 at this time.)

19 MS. SCOTT:

20 Good afternoon, Mr. Tardo. I will be  
21 asking you some questions now.

22 THE WITNESS:

23 Yes, ma'am.

24 MS. SCOTT:

25 As we discussed earlier, just like I was

1 objecting to Beth's questions, she also will  
2 be, I expect, objecting to mine or, at least,  
3 she's allowed to object to mine. And just  
4 like you were allowed to answer questions  
5 when I objected, you are also allowed to  
6 answer questions even when she objects.

7 THE WITNESS:

8 Okay.

9 MS. SCOTT:

10 But just for the court reporter's sake,  
11 if you could just give a brief pause before  
12 answering my questions, I'm sure that will be  
13 appreciated; okay?

14 THE WITNESS:

15 Okay.

16 EXAMINATION BY MS. SCOTT:

17 Q. Do you know what I mean when I say,  
18 "non-managerial duties"?

19 A. Yeah. That would be, like, cleaning the  
20 bathrooms, sweeping the floors, running the  
21 register, working the photo lab.

22 Q. And what non-managerial duties did you  
23 complete when you were a store manager at Rite  
24 Aid?

25 A. All of them. I did it all.

1 Q. And can you elaborate on that and  
2 explain specific examples of non-managerial tasks  
3 that you completed while as a store manager at  
4 Rite Aid?

5 A. Well, I swept the floors. I got the  
6 buggies.

7 Q. And what do you mean by that?

8 A. I mean, I retrieved them, brought them  
9 inside.

10 Q. By, "buggies," do you mean the carts  
11 that were used --

12 A. Shopping carts, yes. The shopping  
13 carts. Cleaned the bathrooms, swept and mopped  
14 the floors, ran the cash register, worked in the  
15 photo lab, put up stock, did planograms. That's  
16 about it.

17 Q. Did you unload the truck, as a store  
18 manager at --

19 A. Yes.

20 Q. -- Rite Aid?

21 A. Yes.

22 Q. Would you consider unloading the truck a  
23 non-managerial duty that you completed?

24 MS. MOELLER:

25 Objection to form.



1 THE WITNESS:

2 Yes.

3 BY MS. SCOTT:

4 Q. What was your answer?

5 A. "Yes."

6 Q. Did you price items while you were a  
7 store manager at Rite Aid?

8 A. Well, no. That all came in from  
9 Corporate.

10 Q. So you had no control over the pricing  
11 of items?

12 A. No.

13 Q. What percentage of time would you say  
14 that you -- strike that. What percentage of time,  
15 as a store manager at Rite Aid, did you complete  
16 non-managerial tasks?

17 MS. MOELLER:

18 Object to the form.

19 THE WITNESS:

20 About 75 percent of the time.

21 BY MS. SCOTT:

22 Q. (Indicating.) And if you'll look at  
23 what's been marked as Exhibit 4 in front of you,  
24 do you see any of the non-managerial tasks that  
25 you just listed a moment ago written on that,

1 Exhibit 4, which is labeled as the, "Rite Aid Job  
2 Description of the Store Manager"?

3 A. (Reviewing Documents.) No.

4 Q. Did you consider those tasks to be your  
5 responsibility to perform?

6 A. No.

7 Q. If those tasks were not completed by  
8 you -- strike that. If the non-managerial tasks  
9 that you had to complete were not completed, what  
10 would happen to you?

11 MS. MOELLER:

12 Objection to form.

13 THE WITNESS:

14 I would have got behind or would have  
15 got wrote up.

16 BY MS. SCOTT:

17 Q. Why did you have to complete  
18 non-managerial tasks, as a store "supervisor" at  
19 Rite Aid?

20 A. Because of the labor rate.

21 Q. And can you explain that?

22 A. If I was -- if they gave me 200 hours, I  
23 had to manage my employees in that 200 hours, even  
24 including my -- including time, 45. But in a  
25 salary, they would have been just employees, the

1 front end.

2 Q. So were your 45 hours included in the  
3 200 hours that you would have allotted?

4 A. If it was hourly, yes. The salary would  
5 just be the -- just employees on the -- the  
6 hourly, the labor rate.

7 Q. I'm sorry. Can you explain that, how  
8 the -- would your salaried number of hours be  
9 included in your labor budget?

10 A. No.

11 Q. Did completing non-managerial tasks  
12 affect how you were able to run the store?

13 A. Yes.

14 Q. In what ways?

15 A. It was taken away from my job duties of,  
16 you know, watching employees, you know, doing  
17 all -- doing the evaluating.

18 Q. And did doing these non-managerial tasks  
19 affect how you were able to supervise staff?

20 A. Yes.

21 Q. Did doing these non-managerial tasks  
22 affect how you were able to monitor the safety  
23 conditions in the store?

24 A. Yes.

25 Q. Did doing these non-managerial tasks and

1 duties affect how you were able to supervise the  
2 store at all times?

3 MS. MOELLER:

4 Object to the form.

5 THE WITNESS:

6 Yes.

7 BY MS. SCOTT:

8 Q. Were you able to fully supervise your  
9 employees while doing non-managerial tasks?

10 A. Yes.

11 Q. You were able to fully supervise --

12 A. Yes.

13 Q. If, for instance, you were unloading the  
14 truck, were you able to supervise a cashier who  
15 was ringing up the register?

16 MS. MOELLER:

17 Objection.

18 THE WITNESS:

19 No.

20 BY MS. SCOTT:

21 Q. Were there any other times when you  
22 would be completing a non-managerial task where  
23 you would not be able to supervise employees  
24 because, as a for-instance, you weren't able to  
25 see them?

WITNESS' CERTIFICATE

I, RON ANTHONY TARDO, do hereby certify that  
I have read or have had read to me the foregoing  
transcript of my testimony, given on Tuesday,  
9/13/11, and hereby certify that it is a true and  
correct transcription of my testimony, with the  
exception of any corrections or changes attached  
hereto.

(CHECK ONE)

( ) WITHOUT CORRECTIONS.

( ) WITH CORRECTIONS, AND/OR  
ADDITIONS ATTACHED HERETO.

SIGNATURE: \_\_\_\_\_

Exhibit KKK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

YATRAM INDERGIT, on behalf of himself  
and others similarly situated,

Plaintiff,

- vs -

RITE AID CORPORATION, RITE AID OF  
NEW YORK, INC., and FRANCIS OFFOR as  
Aider & Abettor,

Defendants.

CIVIL ACTION NO. 1:08-cv-09361-  
PGG-HBP

-----x

July 15, 2011

9:53 a.m.

DEPOSITION of LAURENT TREMBLAY, taken by  
Defendants, pursuant to Fed.R.Civ.P. 30 and  
agreement of counsel, held at the offices of EMG  
New York, 250 Park Avenue, New York, New York  
10177, before Janet Hamilton, a Registered  
Professional Reporter and Notary Public of the  
State of New York.

1 L. Tremblay, 7/15/11

2 A. Yes.

3 Q. And then it was in 2008 that they  
4 had the grand reopening as a Rite Aid store?

5 A. Yes.

6 Q. Do you recall when in 2008 the  
7 grand reopening took place?

8 A. I believe it was in June.

9 Q. Did that effect your work in any  
10 way?

11 A. Yes.

12 Q. How did it effect your work, the  
13 grand reopening in June 2008?

14 A. I ended up working a lot more.

15 Q. Tell me -- tell me all about it.

16 A. I was told by the district manager  
17 that during this period I should work six or  
18 seven days a week and be there as much as  
19 possible.

20 Q. How long did that period last?

21 A. From the remodel start? I believe  
22 they started remodeling in March, I want to say.

23 Q. March of 2008?

24 A. Yes.

25 Q. How long did the remodeling last?



1 L. Tremblay, 7/15/11

2 A. I believe it was, like, six to ten  
3 weeks. In that range.

4 Q. Were you still open for business  
5 during that time?

6 A. Oh, yes. Yes.

7 Q. Are you familiar with the term  
8 "paint and powder"?

9 A. Yes.

10 Q. What does that refer to?

11 A. Just refurbish the inside of the  
12 store with paint and rearrange.

13 Q. Is that what took place in the  
14 Fall River store? Or was it more extensive than  
15 that?

16 A. They changed aisles. They painted.  
17 They redid the floor. Put carpeting.

18 Q. Did the store's hours of operation  
19 change during the remodeling?

20 A. Yes.

21 Q. What was -- what were the hours of  
22 operation for the Fall River store in 2006?

23 A. When I first got there, I believe  
24 it was 9:00 to 9:00.

25 Q. Was that seven days a week?

1 L. Tremblay, 7/15/11

2 A. Sunday was 9:00 to 6:00.

3 Q. Was that the hours of operation in  
4 2007?

5 A. They did change the hours to  
6 8:00 to 10:00.

7 Q. In 2007?

8 A. I believe it was then.

9 Q. Monday through Saturday?

10 A. Yes.

11 Q. And then what did they do on  
12 Sunday?

13 A. I believe it was 8:00 to 6:00.

14 Q. So they increased the hours of the  
15 store's operation?

16 A. Yes.

17 Q. And during the remodeling, how did  
18 the hours of operation change?

19 A. Not too much. You mean being open?

20 Q. Yes, sir.

21 A. They stayed the same.

22 Q. Being open to the general public?

23 A. Right. They stayed the same.

24 Q. Did the remodeling crews work  
25 overnight?

1 L. Tremblay, 7/15/11

2 A. No. I don't think they did. I  
3 don't remember them staying overnight.

4 Q. Were they working alongside you  
5 while you were doing business in the store and  
6 they were remodeling the store?

7 A. They were doing their thing. I was  
8 doing mine. Yes.

9 Q. Did that effect business in any  
10 way?

11 A. Yes. Business dropped a little bit  
12 during the paint and powder.

13 Q. So "paint and powder" was the term  
14 they used for your remodel?

15 A. You could say that.

16 Q. Now, during 2006 and 2007, before  
17 the remodeling, what was your regular schedule  
18 of work?

19 A. My regular schedule in Fall River?

20 Q. Yes, sir.

21 A. Was 50 hours a week, minimum. It  
22 was five days.

23 Q. And did you open the store?

24 A. Yes.

25 Q. How many days did you open?

1 L. Tremblay, 7/15/11

2 A. Four.

3 Q. Let me take a wild guess. Did you  
4 close one day?

5 A. One or two.

6 Q. So you opened three to four and you  
7 closed one to two?

8 A. Yes.

9 Q. Did you decide which days you would  
10 open?

11 A. Yes.

12 Q. And did you decide which days you  
13 would close?

14 A. Yes.

15 Q. Did you assign the assistant store  
16 manager to open the store on the days that you  
17 did not?

18 A. Yes.

19 Q. And did you assign the assistant  
20 store manager to close the store on the days  
21 that you did not?

22 A. Yes.

23 Q. Did you assign the shift supervisor  
24 to either open or close the store?

25 A. Yes.

1 L. Tremblay, 7/15/11

2 Q. How many days did the shift  
3 supervisor -- who I think you referred to as a  
4 key person. Right?

5 A. Right.

6 Q. If I refer to that person as a  
7 shift supervisor, will you understand who I  
8 mean?

9 A. Yes.

10 Q. Did you assign the shift supervisor  
11 to open the store?

12 A. Yes.

13 Q. How many days a week?

14 A. As needed, when the assistant or  
15 myself weren't opening or closing. Most of the  
16 time it was to close the store at night.

17 Q. So you assigned the shift  
18 supervisor to open or close as needed when  
19 neither yourself nor the assistant store manager  
20 were available to do that. Is that correct?

21 A. Yes.

22 Q. Now, tell me about the opening  
23 procedure. When you opened the store, what did  
24 you do?

25 A. Came in.

1 L. Tremblay, 7/15/11

2 Q. This is Fall River?

3 A. Fall River.

4 Come in at 7:00, 7:15 in the  
5 morning.

6 Q. This is when the store opened at  
7 8:00?

8 A. Yes.

9 Q. Or when the store opened at 9:00?

10 A. At 8:00.

11 Q. You arrived at the store between  
12 7:00, 7:15?

13 A. Yes.

14 Q. And what did you do?

15 A. I did the daily deposit.

16 Q. What did that involve?

17 A. Counting the money from the night  
18 before, matching it up with the receipt, the  
19 register totals.

20 Q. This is money that was in the safe?

21 A. Correct.

22 Q. And the safe was in the manager's  
23 office?

24 A. Yes.

25 Q. And just before we get to the safe,

1 L. Tremblay, 7/15/11

2 was there an alarm that you turned off?

3 A. Yes. Deactivated the alarm.

4 Q. You had a code to do that?

5 A. Yes.

6 Q. Did the assistant store manager

7 also have a code to deactivate the alarm?

8 A. Yes.

9 Q. And did the shift supervisor also

10 have a code to deactivate the alarm?

11 A. Yes.

12 Q. Then you went to the office and

13 counted the money in the safe?

14 A. Correct.

15 Q. And compared it to the receipts

16 that were on the cash register's record from the

17 sales of the day before?

18 A. Correct.

19 Q. Is that the same procedure that the

20 assistant manager used when the assistant

21 superman --

22 A. There were no supermen in that

23 store.

24 Q. The assistant store manager --

25 MS. RUBIN: Objection to form.

1 L. Tremblay, 7/15/11

2 now, if you don't mind.

3 (Recess, 10:42 a.m. to 10:46 a.m.)

4 CONTINUED EXAMINATION

5 BY MR. WEINER:

6 Q. (By Mr. Weiner) Did you schedule  
7 the assistant manager to cover the hours the  
8 store was open when you were not there?

9 A. No.

10 Q. How did you --

11 A. We overlapped sometimes.

12 Q. Tell me how you would arrange the  
13 schedule of the people that you had.

14 A. I tried to schedule more hours when  
15 it was busier. Usually, that was, like I said,  
16 between, you know, 4:00 and 6:00. Sometimes a  
17 little later. Schedule more people when the  
18 truck arrived. You know. To put it up, help  
19 put it up. After -- usually, I unloaded it with  
20 the assistant manager. And we used the hours  
21 after to have them -- after it was unloaded and  
22 spread out in the store, they would come in and  
23 help put it up.

24 Q. And how did you use your shift  
25 supervisors?



1 L. Tremblay, 7/15/11

2 A. Usually at night, from 4:00 to  
3 10:00, 5:00 to 10:00. You know. Usually to  
4 close the store. It was usually either one or  
5 two cashiers.

6 Q. What time did you generally leave  
7 the store, if you opened the store?

8 A. That varied. Depending on what had  
9 to be done. Usually it was 5:30. Anywhere from  
10 5:30 to 6:00. Not every day, but sometimes  
11 longer.

12 Q. Sometimes shorter?

13 A. Not usually.

14 Q. What kinds of things would keep you  
15 past 5:30?

16 A. Late truck. If you happen to catch  
17 a shoplifter at 5:00. The amount of work that  
18 was -- that needed to be done.

19 Q. Did the truck come on a specific  
20 day?

21 A. Yes.

22 Q. Which day?

23 A. They rotated the trucks every -- I  
24 want to say three months.

25 Q. The delivery day was --

1 L. Tremblay, 7/15/11

2 A. The delivery day would change one  
3 day. You would go from a Monday to a Tuesday to  
4 a Wednesday to a Thursday, Friday. And then  
5 start over again. But it stayed consistent for  
6 that -- you know. Unless there was a holiday,  
7 it would stay consistent for that period of  
8 time.

9 Q. You received one delivery each week  
10 from the truck?

11 A. Yes.

12 Q. The truck was a Rite Aid truck?

13 A. Yes.

14 Q. What time of day did the truck  
15 arrive?

16 A. In Fall River?

17 Q. Yes, sir.

18 A. Around 1:00 or 2:00.

19 Q. Did that vary?

20 A. Sometimes.

21 Q. How long did it take to unload the  
22 truck?

23 A. That varied on the size of the  
24 order. You usually -- I was pretty lucky in a  
25 way, because the truck would back up. I had a

1 L. Tremblay, 7/15/11

2 Q. On the truck day?

3 A. Yes. Sometimes it would lap over  
4 into the next day.

5 Q. And while you were doing that  
6 stocking, were you concurrently doing other  
7 duties?

8 A. Yes.

9 Q. For example, keeping an eye out for  
10 shoplifters?

11 A. Yes.

12 Q. Answering customer complaints, if  
13 there were any?

14 A. Yes.

15 Q. Answers customer questions?

16 A. Yes.

17 Q. So that, while you were stocking,  
18 you could be interrupted by other activities  
19 that needed your attention. Is that fair to  
20 say?

21 A. Yes.

22 Q. During the time you were there, did  
23 you hire any of the cashiers?

24 A. We would interview them. And the  
25 district manager gave you the okay to either

1 L. Tremblay, 7/15/11

2 hire them or not.

3 Q. Did you recommend certain cashiers  
4 be hired, recommend others not be?

5 A. When I want to hire somebody, I  
6 want to hire them. You know. Naturally, you're  
7 going to recommend them to the district manager.  
8 I wouldn't hire somebody that I didn't think was  
9 going to do a good job. So I would give him the  
10 application. And he'd go over it, interview  
11 them, and he would give me the okay to hire or  
12 not to hire.

13 Q. So you would interview applicants?

14 A. Yes.

15 Q. And this is Fall River?

16 A. Yes.

17 Q. In 2006, do you recall  
18 approximately how many applicants for a  
19 cashier's job you interviewed?

20 A. Couldn't tell you, really.

21 Q. And then, if I asked you each year,  
22 would you say you couldn't tell me per year?

23 A. I'm sure it varied.

24 Q. Let me just ask you. Over the  
25 course of the time you were the store manager at

1 L. Tremblay, 7/15/11

2 Fall River, from 2006 through the end of 2008,  
3 or through September of 2008, in total,  
4 approximately how many applicants did you  
5 interview?

6 A. Probably somewhere between 20 and  
7 30.

8 Q. And of those, how many did you  
9 recommend be hired?

10 A. Probably half. Around 15.

11 Q. And of the 15 you recommended be  
12 hired, how many did the district manager  
13 approve?

14 A. Not sure. There were a few that  
15 were not -- you know. I was told not to hire  
16 them. I can't remember their names. But I know  
17 there were a few.

18 Q. And is that because their  
19 background check didn't come out right?

20 A. I'm not sure. They would just tell  
21 me they're not hireable.

22 Q. Did applicants, after you  
23 interviewed them, have to submit to a drug test?

24 MS. RUBIN: Objection to form.

25 A. I don't think so.

1 L. Tremblay, 7/15/11

2 Q. (By Mr. Weiner) Was there a  
3 background screening that had to be conducted?

4 A. With Rite Aid, there was a test.  
5 Like, it was an honesty test, I forget the name  
6 of the test, that they would give the  
7 applicants. And if they didn't pass that  
8 test -- well, this was -- I should clarify that.  
9 That was when I first started with them in '92.

10 Q. I'm going to try to confine our  
11 inquiry to the later period, if that's okay with  
12 you.

13 A. I don't believe there was a drug  
14 test. There might have been for the pharmacy.  
15 I'm not sure. I can't remember.

16 Q. All right. Did you interview  
17 applicants for positions in the pharmacy?

18 A. No.

19 Q. The 20 to 30 that you indicated  
20 that you interviewed were all for front end?

21 A. Yes.

22 Q. Did you -- well, did you interview  
23 anyone for any position other than cashier?

24 A. Key people.

25 Q. You did. How many key people did

1 L. Tremblay, 7/15/11

2 Q. And were there any other district  
3 managers at that store?

4 A. No.

5 Q. Do you recall when Guy Suffelleto  
6 left the position of district manager?

7 A. I think it was probably about seven  
8 or eight months after I got to the Fall River  
9 store. I'm not quite positive. In that range.

10 Q. Do you know where Guy went?

11 A. He went to the New Bedford area.  
12 They took that store away from him and gave it  
13 to another district manager. And he inherited  
14 some stores down on the Cape.

15 Q. And had Jean Duval been a district  
16 manager somewhere else?

17 A. Yes.

18 Q. Do you know where?

19 A. He was in Fall River. Newport. In  
20 that area.

21 Q. Newport, Rhode Island?

22 A. Yes. We had stores all over. I  
23 mean, his territory covered a lot. You know.

24 Q. About how many stores were in Guy  
25 Suffelleto's district?

1 L. Tremblay, 7/15/11

2 A. I believe it was between, like, 15  
3 and 18.

4 Q. And how many stores were in Jean  
5 Duval's district?

6 A. They all had about the same amount  
7 within one or two stores.

8 Q. Now, we'll get back to transfers.  
9 But let's finish with the promotions that you  
10 were describing earlier.

11 A. What promotion?

12 Q. The promotions from cashier to key  
13 people.

14 A. Oh. Okay.

15 Q. There were five or six applicants  
16 that you interviewed for the key position. Is  
17 that correct?

18 A. I believe so. Yes.

19 Q. And of those five or six, you were  
20 able to promote two. Is that correct?

21 A. Yes.

22 Q. Were there any applicants for the  
23 assistant manager position?

24 A. We had people that came in and  
25 applied for store manager, assistant manager.



1 L. Tremblay, 7/15/11

2 Whatever. We would take their application and  
3 turn it in. Never interviewed anybody for  
4 assistant.

5 Q. Because there were no positions  
6 available. Is that correct?

7 A. No. Because we couldn't hire.

8 Q. Because you didn't have the --

9 A. Authority.

10 Q. The payroll authority? Or just the  
11 authority to hire a management position?

12 A. Assistant managers were hired by  
13 district managers.

14 Q. Who hired you at Fall River?

15 A. I was already -- at that time I had  
16 been working for Rite Aid already. I mean,  
17 Brooks. And I just continued on. I mean, it  
18 wasn't -- you know.

19 Q. You weren't a new hire?

20 A. Yes. I wasn't a new hire.

21 Q. You were a keeper?

22 A. No. I was a store manager.

23 Q. Right.

24 MS. RUBIN: Objection to form.

25 Q. (By Mr. Weiner) You were kept as a

1 L. Tremblay, 7/15/11

2 store manager by Rite Aid after Rite Aid  
3 acquired Brooks?

4 A. Right.

5 Q. Was there a training period that  
6 took place after Rite Aid acquired Brooks?

7 A. Yes.

8 Q. Do you recall who came to your  
9 store to train you?

10 A. Some person from -- I can't  
11 remember where. I think it was the Pennsylvania  
12 area. Came down for a number of weeks. Showed  
13 us the system. Because we had new registers and  
14 all that stuff. And the procedures to follow.  
15 I think it was a two-week period that they came.

16 Q. How many of them were there?

17 A. One.

18 Q. One fellow?

19 A. Woman or -- I believe it was a guy  
20 that came down. I can't remember his name.

21 Q. I'm going to try. Was it Ken  
22 Ruzat?

23 A. There was a -- I can't be sure.

24 Q. Was it Ken?

25 A. It sounds -- the name rings a bell.

1 L. Tremblay, 7/15/11

2 you ordered ten items and they picked eight and  
3 eight were delivered and you were charged for  
4 ten, that would be shrink, too. Is that  
5 correct?

6 A. Right. Yes.

7 Q. The pickers you're referring to are  
8 at the warehouse?

9 A. Warehouse. Yes.

10 Q. Could you determine whether you got  
11 the right number of totes?

12 A. Yes. Usually.

13 Q. Did you verify that the number of  
14 totes that you ordered were --

15 A. Yes.

16 Q. -- were properly delivered?

17 MS. RUBIN: Please let him finish  
18 the question.

19 THE WITNESS: Sorry.

20 MR. WEINER: That's all right.

21 We're all trying to do the same thing.

22 Some people get upset when they're

23 interrupted. I'm not one of them. But --

24 I need to take another break.

25 (Recess, 11:32 a.m. to 11:36 a.m.)

1 L. Tremblay, 7/15/11

2 CONTINUED EXAMINATION

3 BY MR. WEINER:

4 Q. I had asked you earlier about  
5 applicants that you interviewed for cashier  
6 positions. And I asked you about promotions  
7 from cashier positions to shift supervisor. Let  
8 me ask you: Were there any employees that you  
9 demoted?

10 A. No.

11 Q. Were there any employees that you  
12 terminated?

13 A. There were a couple of cashiers  
14 that were terminated while I was there.

15 Q. Tell me about them.

16 A. I called the district manager, told  
17 them what was happening. I thought the girl was  
18 taking, stealing out of the registers. And they  
19 did catch her and determined that she was  
20 stealing. And he fired her.

21 Q. And what was it that aroused your  
22 suspicion?

23 A. Well, she had shortages a lot.  
24 Nothing really big, big. But, you know,  
25 shortages.

1 L. Tremblay, 7/15/11

2 Q. Like, how much?

3 A. You know. Five dollars. Ten  
4 dollars. Four bucks. Three bucks.

5 Q. Uh-hum. Did you conduct cash  
6 register audits?

7 A. Yes.

8 Q. How frequently did you conduct  
9 them?

10 A. I tried to get everybody at least  
11 once a month.

12 Q. Were these surprise audits?

13 A. Yes.

14 Q. And how did you determine who to  
15 audit?

16 A. You just -- if we suspected  
17 anything, then we would probably audit her a  
18 little more often. But we did try to audit  
19 everybody.

20 Q. When you say "we" --

21 A. Me. The assistant manager.

22 Q. Did the assistant manager also have  
23 the authority to conduct a cash register audit?

24 A. Yes.

25 Q. Did the shift supervisors also have

1 L. Tremblay, 7/15/11

2 Q. How frequently?

3 A. It varied. You know. It wasn't on  
4 a set time schedule. We had more conference  
5 calls than anything.

6 Q. How frequent were the conference  
7 calls?

8 A. Usually once a week.

9 Q. Who were on these conference calls?

10 A. The store managers and the district  
11 manager. If the store manager wasn't there for  
12 some reason -- I mean, they basically wanted you  
13 to be there when the conference call was going  
14 to be held, unless you had some extenuating  
15 circumstances.

16 Q. They basically wanted a store  
17 manager to be on the conference call?

18 A. Conference call. Yes.

19 Q. But if there was an extenuating  
20 circumstance, they'd exempt --

21 A. If you had a doctor's appointment  
22 or an emergency or whatever.

23 Q. Or if you were on vacation?

24 A. Or vacation. Yes.

25 Q. And then they would accept the

1 L. Tremblay, 7/15/11

2 assistant store manager in your place. Is that  
3 correct?

4 A. Correct.

5 Q. So the store managers from each of  
6 the stores in the district were on the call. Is  
7 that correct?

8 A. Yes.

9 Q. And the district manager was on the  
10 call?

11 A. Yes.

12 Q. Anybody else at the district level?

13 A. No, not usually.

14 Q. And anyone else at the store level?

15 A. No.

16 Q. And what were the subjects that  
17 were discussed in the conference calls?

18 A. Labor. Stay on budgets.

19 Q. Labor, meaning the labor budget?

20 A. Yes. If you were over, they would  
21 want to know why, usually. I mean, you couldn't  
22 go over budget unless you called him and asked  
23 him for hours.

24 Q. What happens if you did? What  
25 happens if you just -- you know. You were given

1 L. Tremblay, 7/15/11

2 200 hours to schedule, and you recognize that  
3 you needed more -- like 210 -- and you scheduled  
4 210?

5 MS. RUBIN: Objection.

6 Q. (By Mr. Weiner) What happened  
7 then?

8 A. You would get a call.

9 Q. Did you ever do that?

10 A. Yes.

11 Q. You would schedule more people than  
12 you were budgeted. Right?

13 A. Without permission? I did it once  
14 and, you know, I got reprimanded for it.

15 Q. By the district manager?

16 A. Yes.

17 Q. Which one was that?

18 A. Guy Suffelleto.

19 Q. How much over the budget did you  
20 schedule?

21 A. Like, seven, eight hours.

22 Q. And what did Guy Suffelleto say?

23 A. You can't go over budget, unless  
24 you call me and I approve it.

25 Q. Did you thereafter call for



1 L. Tremblay, 7/15/11

2 approval for more hours on certain occasions?

3 A. Not really. Unless it was  
4 something really dire. You know.

5 Q. Like not having an assistant  
6 manager?

7 A. Yes.

8 Q. Did you call the district manager  
9 when you didn't have an assistant manager and  
10 said --

11 A. Oh, he --

12 MS. RUBIN: Objection. Form.

13 A. I mean, I didn't have to call. He  
14 came down and told me, you know, we don't have  
15 anybody right now. Just hang in there. You  
16 know. Do whatever you got to do.

17 Q. (By Mr. Weiner) So staying within  
18 the labor budget was a subject that was  
19 discussed during the conference calls?

20 A. Frequently.

21 Q. What else?

22 A. If we were, had a lot of planograms  
23 to do, he wanted to make sure everybody was up  
24 to date on them. You weren't falling behind on  
25 your price changes. Store conditions.

1 L. Tremblay, 7/15/11  
2 me, they owed me four weeks vacation, which I  
3 was going to lose in two weeks because I  
4 couldn't take my vacation because I didn't have  
5 the help.

6 Q. Did you get paid for the vacation?

7 A. Yes. But, still, that doesn't --  
8 you know. You need time away. You need time  
9 away. It's a benefit that I couldn't take that  
10 I was entitled to.

11 Q. Do you recall how much your salary  
12 was at the time you left?

13 A. I want to say 847 a week. Like  
14 43,000. You know. Around there.

15 Q. Is there anything else that we  
16 haven't yet discussed about your employment at  
17 Rite Aid?

18 MS. RUBIN: Objection to form.

19 A. You know. I just didn't like the  
20 way I was treated. Because of the, you know,  
21 the hours and always this and that. You know.

22 Q. (By Mr. Weiner) And is that  
23 primarily as a result of the district managers?

24 A. Well, yes. They would come down.  
25 You know. They would beat on you -- not beat on

1 L. Tremblay, 7/15/11

2 you, but pounded into you you've got to stay on  
3 budget. The vice president is coming. This guy  
4 a coming. That guy is coming.

5 Q. So at this time do you believe that  
6 your testimony is complete and accurate?

7 A. Yes. As far as I'm concerned.  
8 Yes.

9 MR. WEINER: Do you have any  
10 questions?

11 MS. RUBIN: I do. Can I have a few  
12 minutes?

13 MR. WEINER: Of course. Certainly.  
14 You're not going to speak to Mr. Tremblay  
15 before you begin your examination, are  
16 you?

17 MS. RUBIN: No.

18 (Recess, 3:00 p.m. to 3:07 p.m.)

19 CROSS EXAMINATION

20 BY MS. RUBIN:

21 Q. So, Mr. Tremblay, how much time was  
22 spent doing non-managerial duties?

23 A. Well...

24 Q. At the Fall River store.

25 A. I'd say, out of a day, a ten-hour

1 L. Tremblay, 7/15/11

2 day, I probably spent two hours managing. And  
3 the rest was either stocking, cleaning, putting  
4 up -- doing stuff in the back room. Like  
5 bringing out -- we used to have a list that  
6 would print out of the computer. And that was  
7 in the back room. We'd have to go get it, bring  
8 it out, put it up on the shelf. Wash floors  
9 sometimes. Because we had nobody else to do it.  
10 I mean, I could tell people to do it, if I had  
11 them. But most of the time it was me and the  
12 cashier. So all that stuff fell on me. So I'd  
13 say about two hours.

14 You did the deposit. You set up  
15 the drawers. Went to the bank. Probably took  
16 two hours, total. And then the rest -- you  
17 know. The rest of the time you were doing  
18 non-managerial.

19 Q. And how did that effect your  
20 ability to manage the store?

21 A. I mean, you couldn't manage the way  
22 you really wanted to. I mean, you couldn't  
23 delegate a lot of things. You had to do it  
24 yourself. It just put too many constraints on  
25 you. You just didn't have the hours to deal

1 L. Tremblay, 7/15/11

2 with what they wanted done. You just couldn't  
3 do it in the time they allotted.

4 Q. How did District Manager Suffelleto  
5 treat you?

6 A. Not very well.

7 Q. How is that?

8 A. He was very condescending.

9 Threatened a lot. You know. Not "I'm going to  
10 kill you," or anything like that. But, "You've  
11 got to work six days. You've got to work seven  
12 days. I want this done now. You've got to get  
13 this done for us." You know. Very -- very  
14 condescending sometimes.

15 Q. How did that compare to District  
16 Manager Jean?

17 A. Jean Duval? They were both -- Jean  
18 might have been a little bit nicer in front of  
19 you. But, you know, when it came down to if it  
20 was going to effect him, he just would rip you a  
21 new -- whatever. You know.

22 Q. You mentioned that you would work  
23 the register sometimes?

24 A. Yes.

25 Q. How often were you on the register

1 L. Tremblay, 7/15/11

2 on, like, a daily basis?

3 A. Anywhere from -- I'd say an hour to  
4 two hours. Sometimes. Depends on if -- if  
5 somebody was late and there was nobody there,  
6 you had to ring. You know. If the girl was a  
7 half hour late and you rang for the lunch and  
8 her breaks, it might amount to an hour and a  
9 half, two hours. You know.

10 While you're doing that, you can't  
11 do anything else. You've got no way to be there  
12 for the customer. I mean, you could walk up to  
13 the office. By the time you get there, you've  
14 got somebody waiting. You walk back down. You  
15 go back and forth. It's hard to get things  
16 done.

17 Q. Were you able to see every part of  
18 the store while you were on the register?

19 A. No. No. You could see -- I mean,  
20 you had a little walkway in the back of the  
21 register, which was probably, I'd say, ten feet.  
22 So you were kind of constricted to, like, maybe  
23 three aisles. So...

24 Q. How did your position as a store  
25 manager at Rite Aid compare to when you were a

1 L. Tremblay, 7/15/11

2 store manager at Brooks?

3 A. When we were at Brooks, we had more  
4 hours. Rite Aid came in and cut our hours. The  
5 only time we got extra hours is when it wouldn't  
6 benefit -- most of the time it was going to  
7 benefit the district manager. His boss was  
8 going to come in. He'd give you a few hours to  
9 get the store to look good so he would look  
10 good. Otherwise, they were "Stick to your  
11 budget." I had better bonuses with Brooks.

12 It was just a much better  
13 atmosphere working for Brooks than it was at  
14 Rite Aid.

15 Q. Did you have more control as a  
16 store manager at Brooks than you had at  
17 Rite Aid?

18 A. Yes.

19 Q. Why is that?

20 A. The district manager would kind of  
21 tell you, you know, if you've got to use a few  
22 more hours, use them. You know. Use them for  
23 what you need. Not -- you know. Just don't add  
24 ten hours onto your schedule; but, if you fall  
25 behind a little bit and you need a few extra

1 L. Tremblay, 7/15/11

2 hours, go ahead and use them.

3 Q. At Rite Aid as a store manager did  
4 you have any ability to schedule overtime?

5 A. No.

6 Q. Why is that?

7 A. They didn't want to -- you know.

8 They didn't want to pay anybody any overtime.

9 So it was kind of frowned upon to schedule

10 anybody overtime.

11 Q. You mentioned during your testimony  
12 that there was a code for deactivating the alarm  
13 in the office. Correct?

14 A. Yes.

15 Q. And that code was available to the  
16 store manager, the assistant store manager, and  
17 the shift supervisors?

18 A. Yes.

19 Q. Why was that code given to all  
20 three?

21 A. Because we either had to open the  
22 store or close the store. So -- the key people  
23 could open or close. So they could set the  
24 alarm if they came in in the morning or left at  
25 night. Same thing with the assistant. You



1 L. Tremblay, 7/15/11

2 know. She had to close the store. The pharmacy  
3 had their own alarm system and gates. Some of  
4 the stores had gates. Some didn't. Some just  
5 had an alarm system. If you went near it, it  
6 would go off. But everybody that had a code  
7 could close or open the store.

8 Q. And would you say that those three  
9 positions all were responsible for the same  
10 types of duties?

11 A. Oh, yes. Cash control. Doing --  
12 you know. Putting up the stock. Whatever. We  
13 all did what we could while we were there. So,  
14 everybody that -- if I wasn't there and the  
15 assistant was there, she was responsible for the  
16 store. And if it were a key person, we held  
17 them responsible for the store, if we weren't  
18 there and the assistant wasn't there. So they  
19 were responsible for the condition of the store  
20 when they left at the end of the night.

21 Q. Some of the exhibits that we looked  
22 at, we went over some training forms that were  
23 signed. I think it was Exhibit 7 and 8, 9, 11.  
24 Did you have any control in deciding what  
25 training to give to employees?

1 L. Tremblay, 7/15/11

2 A. No. It was -- it came in a packet.

3 And we had them each sign papers, whatever was  
4 in the packet, according to their position. Key  
5 people had to sign maybe one more page that was  
6 different than a cashier. It was training that  
7 came down, all came down from headquarters. And  
8 it was all on the computer. So we didn't really  
9 train. We just set them up. There you go. And  
10 everybody signed each one of these. You know.  
11 They had an I9. They had all these documents to  
12 get hired. So we were all responsible for that  
13 stuff.

14 MS. RUBIN: I think that's all I  
15 have.

16 REDIRECT EXAMINATION

17 BY MR. WEINER:

18 Q. Mr. Tremblay, you mentioned that  
19 the closing manager was responsible for the  
20 condition of the store at the end of the day.  
21 Is that right?

22 A. Yes.

23 Q. And if you were the opening manager  
24 and you came in the following day, is that one  
25 of the things you would take a look at; to see

A C K N O W L E D G M E N T

STATE OF NEW YORK )

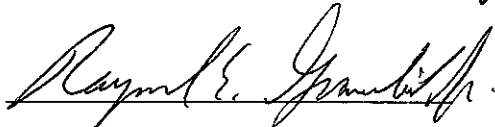
: ss

COUNTY OF )

I, LAURENT TREMBLAY, hereby certify  
that I have read the transcript of my testimony  
taken under oath in my deposition of July 15,  
2011; that the foregoing transcript is a true,  
complete, and correct record of my testimony;  
and that the answers on the record as given by  
me are true and correct.

  
LAURENT TREMBLAY

Signed and subscribed to before me  
this 9 day of August, 2011.



NOTARY PUBLIC

RAYMOND E. GRAMLICH JR.  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
November 9, 2012

# Exhibit LLL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, on behalf )  
of himself and others )  
similarly situated, )  
 )  
Plaintiff, ) CIVIL ACTION NO.  
 ) 1:08-cv-09361-PGG-  
VS. ) HBP  
 )  
RITE AID CORPORATION, RITE )  
AID OF NEW YORK, INC., and )  
FRANCIS OFFOR as Aider & )  
Abettor, )  
 )  
Defendants. )  
\_\_\_\_\_ )

DEPOSITION OF RUSSELL H. WHINDOM  
Los Angeles, California  
Thursday, August 11, 2011

Reported by: NIKKI ROY  
CSR No. 3052

1 A. Yes.

2 Q. So would one of your job duties then be making  
3 sure the store was profitable?

4 MR. SABA: Objection; form.

5 THE WITNESS: Carrying out the mandates of  
6 corporate as far as merchandising is concerned. That  
7 would be a manager duty, which I did, yes. As far as  
8 where that merchandise went and ordering that  
9 merchandise to be profitable, no, that was done by corp.

10 BY MS. LIVELY:

11 Q. But you would agree, though, that part of your  
12 job duties included the profitability of the store,  
13 correct?

14 MR. SABA: Objection; form.

15 THE WITNESS: Yes, I was responsible for.

16 BY MS. LIVELY:

17 Q. Did you ever work at a store that was known as  
18 a training store for Rite Aid?

19 A. No.

20 Q. Do you know if there were any in your district?

21 A. Define "training."

22 Q. A store where they send new hires to learn to  
23 be trained on a regular basis.

24 A. No.

25 Q. With the exception of the Burien store, was the

1 store manager -- you -- were you as the store manager  
2 the highest ranking employee at the store level?

3 A. At the store level?

4 Q. Yes.

5 A. Just concerning the store itself?

6 Q. Yes.

7 A. Yes.

8 Q. Were your -- the ASMs that you had at the  
9 different stores, were they all salaried or were some of  
10 them hourly?

11 A. 5201, the last time, hourly.

12 Q. And do you know why that was?

13 A. Not exactly, no.

14 Q. Did you hire that ASMs who's hourly --

15 A. No.

16 Q. -- or was they -- was he or she changed?

17 A. Changed.

18 Q. Did you ever promote any individuals into the  
19 ASM position?

20 A. I made recommendations and some were promoted  
21 into assistant manager positions.

22 Q. Who did you make recommendations to?

23 A. District manager.

24 Q. And how did you get the information in order to  
25 make a recommendation?

1 A. Worth -- work ethics, how they handled people.

2 Q. Anything else?

3 A. No.

4 Q. And was that based on your own observations?

5 A. Yes.

6 Q. Approximately how many individuals did you  
7 recommend for an ASM position?

8 A. Over the years, 10, 15.

9 Q. And were all of them promoted?

10 A. I don't recall. I'm going to say probably.

11 Q. When you made recommendations for an individual  
12 to be promoted into the ASM position, did you make any  
13 recommendations on their rate of pay?

14 A. No.

15 Q. At 5220, did you participate in any way in the  
16 hiring of employees?

17 A. Yes.

18 Q. And what was your level of participation in  
19 hiring employees? Excuse me.

20 A. I would take applications, review the  
21 applications, decided on which one to interview or how  
22 many to interview. I would interview them. I could not  
23 offer them a position until forms were filled out,  
24 background checks were done by corporate and human  
25 resources signed off after the background checks were



1 completed, and if warranted, a drug check. Then I could  
2 call them back in and offer them a position.

3 Q. And was that consistent -- that process  
4 consistent during the entire ten years you were at 5220?

5 A. No, that was the last part of the -- prior to  
6 that --

7 Q. Okay. Go ahead, please.

8 A. Okay. You want me --

9 Q. I was going to say when did that change?

10 A. I don't recall what year it changed, but prior  
11 to that, I could interview somebody, offer them a  
12 position, hire them, background check done after --  
13 basically after they were hired. If it came back bad,  
14 then I fired them. Prior to that, no background checks  
15 were completed. I did all the hiring and basically  
16 firing. On a yearly basis I don't know what, where the  
17 breakdown was. I...

18 Q. Okay. Do you remember generally -- and -- and  
19 I know one of the questions you answered before you kind  
20 of went back to how long before your retirement was. Do  
21 you recall generally how many years before your  
22 retirement that this last -- where you had to have the  
23 background check and HR sign off on it that was in place  
24 before your retirement?

25 A. I don't.

1 Q. And did that vary -- taking the years out of  
2 it, did that vary by store at all? In other words,  
3 was -- did the process -- I guess it would have all been  
4 at 5220, 5212 and 5201. Did they all have --

5 A. Same process.

6 Q. -- the same process? Okay.

7 Did you ever have your assistant store managers  
8 participate in this interview process that you've  
9 described?

10 A. They would sit in on occasion just as a  
11 training.

12 Q. Between 5220, 5212 and 5201, did -- were there  
13 any of the stores that had different departments  
14 compared to the other?

15 I think we've already established they all had  
16 pharmacy and photo lab. Were there certain stores that  
17 had other departments that -- was there one -- perhaps  
18 5220 that had departments that 5201 didn't?

19 MR. SABA: Object to form.

20 THE WITNESS: Between 5220 and 5201, all the  
21 basic departments were basically the same. 5212 had the  
22 core departments as far as cosmetics, toiletries, paper,  
23 chemicals all downsized to fit the configuration of the  
24 store. And they did not have all the departments that  
25 the larger stores did.

1 A. Right.

2 Q. -- add?

3 And would that be one employee typically?

4 A. One -- one employee.

5 Q. And at Renton, did you have to add more  
6 employees during the Christmas holiday as well?

7 A. I did not add employees. I gave -- I added  
8 hours.

9 Q. I'm sorry. For clarification, at the Renton  
10 store, did you add the number of employees scheduled to  
11 work those shifts during the Christmas period?

12 A. Yes.

13 Q. And during your last four years at 5220, was  
14 there a regular time that you were there or did that  
15 vary?

16 A. A lot of the time I was there scheduled 7:00 to  
17 5:00. I would also work a 12:00 to 10:00.

18 Q. And is that five days a week, six days a week,  
19 seven days a week?

20 A. Five days a week.

21 Q. So typically 7:00 to 5:00 --

22 A. Scheduled.

23 Q. Right. So -- sorry. You were typically  
24 scheduled five days a week from 7:00 to 10:00, but  
25 sometimes you would do a -- or I'm -- strike that.

1 My understanding is that typically you would  
2 five days a week work a schedule of -- be scheduled for  
3 7:00 to 5:00, and sometimes you would be scheduled for  
4 12:00 to 10:00; is that correct?

5 A. Correct.

6 Q. And did you usually work in addition to your  
7 scheduled hours?

8 A. Yes.

9 Q. And if you could say during those last four  
10 years at 5220 what your typical work schedule was, what  
11 would it have been, as far as hours you actually worked?

12 A. You want total hours?

13 Q. Let's say, per day or per week.

14 A. 60 to 65 hours.

15 Q. Per week?

16 A. Per week.

17 Q. And was that consistent during that your -- the  
18 entire last four years at 5220?

19 A. Yeah. Now, seasons were a different story,  
20 especially the Christmas season, and inventory.

21 Q. How often did inventory occur?

22 A. Once a year.

23 Q. And how many hours you -- would you say you  
24 worked during inventory a week?

25 A. We usually started getting ready for inventory

1 two weeks prior, so I'm going to say 75 to 80 hours a  
2 week for two weeks.

3 Q. And what about Christmas?

4 A. Christmas was 70 hours a week.

5 Q. And for how many weeks would that go on?

6 A. That would go from Thanksgiving to basically  
7 January 1st.

8 Q. So roughly four weeks?

9 A. Yeah.

10 Q. Did you take vacations where you were gone for  
11 more than a few days at a time during the time you were  
12 store manager at 5220 in those last four years?

13 A. Week at a time.

14 Q. And how many weeks of vacation?

15 A. Five weeks.

16 Q. Did you take your vacation every year that you  
17 were allotted?

18 A. Missed a few days here and there.

19 Q. And were there ever weeks, not including  
20 vacation weeks during those last four years at 5220  
21 where you were working less than 60 hours a week?

22 A. No.

23 Q. And what about during -- at Renton, during the  
24 last period you were there, how many -- strike that.

25 At Renton during the end of your career with

1 Rite Aid, what -- did you have a typical schedule as far  
2 as scheduled hours?

3 A. Scheduled hours?

4 Q. Uh-huh.

5 A. Same amount of hours scheduled.

6 Q. And how about hours actually worked?

7 A. 7:00 to 5:00 with a few 12:00 to 10:15.

8 Q. So at Renton the second time, were you  
9 typically working about 40 -- 40 to 45 hours a week?

10 A. No.

11 Q. I'm trying to find out how many hours you  
12 actually worked at Renton the second time you were  
13 there.

14 A. Second time?

15 Q. Yes.

16 A. Per week?

17 Q. Yes.

18 A. I'm going to say 55 to 60 with the exception of  
19 holidays, et cetera.

20 Q. Did you --

21 A. Inventory.

22 Q. Did you go through --

23 A. I didn't go through an inventory at Renton.

24 Q. That's what I was just going to ask you.

25 Did you take any vacation when you were at

1 directives of the store manager and to run the store in  
2 the absence of the store manager. I didn't assign  
3 anybody anything different than I would another store  
4 manager -- or assistant manager.

5 Q. So there weren't -- there wasn't one store  
6 manager who you thought this person is fabulous, I'm  
7 going to give them additional duties that I think  
8 somebody who's marginal as an ASM might be?

9 A. No, you work with the marginal ones and bring  
10 them up to speed.

11 Q. Did you do performance evaluations for ASMs?

12 A. Yes.

13 Q. And I should phrase that better. Did you --  
14 did you prepare performance evaluations -- evaluations  
15 for ASMs, did you write them?

16 A. Define "prepare."

17 Q. Did you write them?

18 A. They wrote their preliminary evaluations and I  
19 evaluated them on their performance on the previous year  
20 in the categories that were given out in the forms.

21 Q. And was part of what you were evaluating them  
22 on what you had observed by walking around?

23 A. What I observed of their work ethics, how they  
24 performed their job and aspects of the assistant  
25 manager's job description and whether they were

1 performing those duties.

2 Q. Who were would you say were your -- strike  
3 that.

4 Do you remember the names of the ASMs that you  
5 thought were your strongest ASMs?

6 A. No.

7 Q. None of them?

8 A. Well, the last one who was still -- she was  
9 fairly new. She got thrown into the situation that she  
10 really didn't want to be into. The one previous to  
11 that, he moved to San Diego as an assistant manager. I  
12 mean, he was accepted as -- as an assistant manager down  
13 there at one point.

14 Q. What was the name of this last one, the woman  
15 who was thrown in a situation where she --

16 A. Stacy -- I can't remember her last -- her last  
17 name. 5201.

18 Q. Did you ever manage somebody named Renee Hoff?

19 A. Renee Hoff.

20 Q. Yeah.

21 A. No.

22 Q. Of Mr. Sand, Mr. --

23 A. Smolinski.

24 Q. -- Smolinski -- thank you -- and Mr. Mahoney,  
25 which of them gave you the most discretion in running



1 your store?

2 MR. SABA: Objection; form.

3 BY MS. LIVELY:

4 Q. Excuse me.

5 A. There really wasn't any discretion in -- given  
6 out as far as how to run the store. We all have  
7 corporate policies to follow. They initiate and follow  
8 up on whether those corporate policies are being done as  
9 well as directives on merchandising, whether they're  
10 being followed.

11 Q. And of --

12 A. They're doing their job to see that we're doing  
13 our job.

14 Q. And of those three, was there one of them who  
15 was more persistent in his follow-up compared to the  
16 others?

17 A. I would say Marv Sand.

18 Q. And in what ways was he more persistent, what  
19 did he do?

20 A. If there was a directive that needed to be done  
21 tomorrow, he would follow up tomorrow to see if it was  
22 done. Mr. Mahoney might take a couple of days.

23 Q. Were any of them ever rude to you in their  
24 follow-up?

25 A. No.

1 Q. Was the assistant store manager the second  
2 highest ranking individual in the store when you were  
3 there?

4 A. You talking total store?

5 Q. Yeah, in the store, yes.

6 A. Including pharmacy?

7 Q. Yes.

8 A. See, that's a -- they're -- they're two  
9 separate entities.

10 Q. Okay.

11 A. Okay? There's a pharmacy manager, store  
12 manager.

13 Q. Okay.

14 A. Now, as far as the store is concerned, yes,  
15 they were the ultimate store second in charge.

16 Q. Would the pharmacy manager have been your peer  
17 or would you have ultimately been higher than him or her  
18 on a hierarchy?

19 A. I'm responsible for the whole store.

20 Q. Including the pharmacy?

21 A. Including the pharmacy, although I had very  
22 little or no say over the pharmacy.

23 Q. Okay. But if something went wrong with the  
24 pharmacy, ultimately it would come back to you?

25 A. It would bite me.

1 Q. Okay. What job duties do you believe are most  
2 important in your role as a store manager?

3 A. Following the directives of corporate,  
4 profitability.

5 Q. Anything else?

6 A. Making sure the store is run on an efficient...

7 Q. And do you believe you were good at all of  
8 these tasks?

9 A. I believe I was.

10 Q. Do you believe that you had any specific  
11 weaknesses as a store manager?

12 A. Maybe not micromanaging the store as much as I  
13 probably should have as far as -- and that -- that's  
14 also a time issue on being able to do things 110  
15 percent.

16 Q. So explain to me what that means to not  
17 micromanage as much as you should have.

18 A. Well, if I gave somebody a task to do or two or  
19 three people tasks to do, a lot of times I didn't have  
20 time to follow up and make sure that they were done  
21 correctly or done.

22 Q. What took up the most amount of your time?  
23 Let's -- you can go through the last four years as you  
24 were working as a store manager. If you had to say on a  
25 daily or weekly basis what tasks took up most of your

1 time, what would they be?

2 A. Making sure the store was full, making sure the  
3 monthly planner is initiated and merchandise put out  
4 that was sent in for the monthly planner, planograms,  
5 which we'd get two, three a week, making sure that they  
6 were done or doing them yourself.

7 Q. Did employee issues, if you will, problems with  
8 employees take up any significant amount of your time?

9 A. Not a lot. They -- it'd depend on the issue.  
10 If it was a small issue as far as discipline is  
11 concerned, you know, 15, 20 minutes, you know, sitting  
12 down with them.

13 Q. Did you participate in -- with new hires in any  
14 of the actual training that they received as far as  
15 either computer-based training or going through new hire  
16 paperwork training, anything like that?

17 A. New hire paperwork was all done on the  
18 computer. Training as far as the cashier is concerned,  
19 and that's where they first went, I generally had a  
20 couple of good cashiers that they would work with. As  
21 far as them doing any merchandising, they would work  
22 with a seasoned employee.

23 Q. Okay. Did you try to divide a certain amount  
24 of your time on any sort of consistent basis between how  
25 much time you would be in your office versus how much

1 time you would be walking the floor?

2 A. I would generally be in my office for two hours  
3 or less daily. The rest of the time would be on the  
4 floor either facing, putting out merchandise, doing  
5 planograms.

6 Q. Blue dots?

7 A. Putting out merchandise, blue dots, pulling  
8 back room stock.

9 Q. When you were doing these items such as pulling  
10 back room stock or putting out merchandise, were you  
11 ever working with another employee?

12 A. No.

13 MR. SABA: Objection; form.

14 BY MS. LIVELY:

15 Q. When you were doing tasks such as merchandising  
16 or pulling stock, were you still in charge of the store?

17 A. Yes.

18 Q. When you were engaging in those duties, did you  
19 still attempt to observe what was going on around you as  
20 far as was the store clean or safe or what have it?

21 A. Cleaning, make sure the floor is clean, make  
22 sure the aisles are faced, yes.

23 Q. Did your job duties as a store manager change  
24 over time in the last ten years of employment with Rite  
25 Aid?

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1           A. I don't think I understand your question, what  
2   you're getting at.

3 Q. I'm trying to find out, when you -- you've been  
4 a manager for a long time.

5           A.    Uh-huh.

6 Q. Not everyone who we question has been a manager  
7 for a long time. And so some people when they start off  
8 as a manager, they're spending more time learning how to  
9 read reports. And obviously as you became more  
10 seasoned, maybe you need to spend less time doing that  
11 and more time observing and walking around.

12           You came in -- my understanding is you came to  
13   Rite Aid already an experienced manager.

14                    A.    Yes.

15 Q. So did your focus, as far as what you were  
16 working on, change in the last ten years that, when I  
17 started off I was really focused heavily on these tasks,  
18 and that changed, so by the end I was more focused on  
19 these tasks or directives?

20 MR. SABA: Wait. I'm sorry. When you're done,  
21 wait one second.

22                   Objection; form.

23                    And you can answer if you can.

24 THE WITNESS: Okay. Ten years ago we had more  
25 autonomy. As the years progressed down, corporate took

1 over many of the directives that the store manager had  
2 to do.

3 BY MS. LIVELY:

4 Q. Can you give me some examples of what those  
5 directives that were taken over were?

6 A. Mandating where merchandise was to be placed,  
7 tightening the budgets, what merchandise could -- we  
8 couldn't order merchandise that we thought would sell in  
9 the store from a vendor. It was all done -- this is all  
10 done by corporate. We were basically told what we  
11 could -- what was to come in the store and where it was  
12 put.

13 The monthly planner, ten years ago we didn't  
14 have. It's got more -- I don't know how to say it.  
15 The -- it's more of an issue in the last two to four  
16 years that it had to be followed to the T. Even if you  
17 didn't have the merchandise for the end, you were to set  
18 that end. If you had two items or three items on an end  
19 and you only had two items, the other shelf stayed  
20 empty, if you even got that merchandise at all.

21 It's really tough to sell empty space and make  
22 a profit. So yeah, it's changed.

23 Q. In the last two to four years of your  
24 employment as a store manager with Rite Aid, did you  
25 have any discretion in where merchandise was placed?

1           A. As far as the basic tables were concerned, no.  
2           As far as the planogram or the monthly planner, no.  
3           Seasonal, there was a little wiggle room there. Not all  
4           stores got the same amount of merchandise and/or type of  
5           merchandise, especially in the Christmas and the summer  
6           seasonal merchandise. So we were able to put at our  
7           discretion in different areas.

8           Q. And what about ordering merchandise, in the  
9           last two to four years of your employment as a store  
10          manager with Rite Aid, did you have any discretion in  
11          what type of merchandise should be ordered?

12          A. Ad goods.

13          Q. Pardon me?

14          A. Ad goods. That was done on a weekly basis. We  
15          had the ad that we went through. We were able to order  
16          what we thought would sell. Not always getting what we  
17          wanted. We -- like I say, we did that on a weekly  
18          basis. That had to be done by Sundays every week.

19          Q. When you were performing tasks such as  
20          merchandising or pulling freight, you made the decision  
21          that you would do those tasks, correct?

22                 MR. SABA: Objection; form.

23                 THE WITNESS: Made the decision based on the  
24          help I had at that time and what needed to go out at  
25          that time. If I had no hourly employees to do that, I



1 Is that correct?

2 A. Okay. The retail -- or the budgeted sales is  
3 set by corporate. The retails are set by corporate. I  
4 have no control over this.

5 Q. But were you responsible for meeting those  
6 budgets?

7 A. I was responsible for meeting them, but  
8 without -- without my control, it's awful tough to do.  
9 I mean, as a store manager, if somebody else is  
10 budgeting it and somebody else is setting the prices,  
11 which ultimately gives you the margin, I don't feel that  
12 I was responsible for that portion of it.

13 Q. Well, I'm not asking you whether you were  
14 responsible or whether this document says you were  
15 responsible for setting the budget or the margin. It  
16 asked whether you were responsible for meeting the store  
17 retail budgeted sales.

18 Would you agree that you were responsible for  
19 meeting store retail budgeted sales?

20 MR. SABA: Objection; form.

21 THE WITNESS: I was -- basically under the  
22 store budget, yes, I was responsible for meeting, but I  
23 had no control meeting.

24 BY MS. LIVELY:

25 Q. Right, but part of your goal of your job was to

1 meet whatever your budgeted sales goal was; is that  
2 correct?

3 MR. SABA: Objection; form.

4 THE WITNESS: Yes.

5 BY MS. LIVELY:

6 Q. And then the other thing that it looks like you  
7 have crossed out is on No. 3 which is, "Utilize and  
8 follow StaffWorks to ensure that labor is scheduled,"  
9 and I show that you have crossed out "to meet customer  
10 service"; is that correct?

11 A. Yes.

12 Q. And why did you cross that out, sir?

13 A. It's basically not meant for customer service.  
14 StaffWorks -- the labor scheduling was to meet the  
15 budget that was handed down by corporate. Customer  
16 service had nothing to do with -- with the budget as far  
17 as StaffWorks is concerned. It was set -- in other  
18 words, the labor is set to the budget and it does not  
19 necessarily mean customer service needs.

20 Q. Would you --

21 A. We had to live with the budget that was given  
22 us, whether it satisfied the customers' needs or not.

23 Q. Would you agree that providing good customer  
24 service was part of your job responsibilities?

25 A. Yes.

1 Q. And would you agree that making sure your  
2 associates provided good customer service was one of  
3 your job responsibilities?

4 A. Yes.

5 Q. And then the last thing as far as I can see  
6 that you have crossed out is on No. 9.

7 A. Uh-huh.

8 Q. You crossed out "For hiring"; is that correct?

9 A. Yes.

10 Q. Why did you cross that out?

11 A. Because I -- I did not have the ultimate say in  
12 who was hired and who was not hired.

13 Q. But you did have the say in who was  
14 interviewed, correct?

15 A. Correct.

16 Q. And you did have the say in recommending a  
17 hire; is that correct?

18 A. I did, but it held no weight.

19 Q. How do you know that?

20 A. Because if they didn't pass background tests  
21 for whichever reason why, I was unable to hire that  
22 person whether I liked to or not. If I liked to hire  
23 that person, I did not have an override on background  
24 checks.

25 Q. Other than background check, did your

1 recommendation -- strike that.

2 Other than the background check, was it your  
3 understanding that your recommendation was important to  
4 the hiring decision?

5 A. Yes.

6 Q. Other than the background check -- actually,  
7 strike that.

8 Did you ever have a hire that you recommended  
9 not be hired because they failed a background check? I  
10 think I phrased that in a double negative. Let me try  
11 again.

12 A. I think we need to rephrase that.

13 Q. Yeah. Did you ever recommend someone for hire  
14 who was not hired because they failed the background  
15 check?

16 A. Yes.

17 Q. Did you ever recommend somebody for hire who  
18 was not hired for reasons other than the failing the  
19 background check?

20 A. No.

21 Q. Aside from the items that you have lined out on  
22 Exhibit 2, were all of the other items listed as duties  
23 and responsibilities duties and responsibilities that  
24 you in fact at one time or another as a store manager  
25 were responsible for?

1 A. Yes.

2 Q. Do you know what factors went into whether you  
3 received a bonus?

4 A. EBITDA, sales. I think those are the two  
5 factors in -- plus customer service, three factors.

6 Q. Were hourly employees at your store, aside from  
7 pharmacists, eligible for bonuses?

8 A. No.

9 Q. Did you receive stock options from Rite Aid?

10 A. Yes.

11 Q. Do you know whether hourly associates were  
12 entitled to stock options?

13 A. No.

14 Q. No, you don't know, or no, they were not?

15 A. They were not.

16 Q. Did you ever lodge any sort of complaint  
17 against Rite Aid to their associate hotline or to human  
18 resources --

19 A. No.

20 Q. -- you personally?

21 A. No.

22 Q. Did you know you could have?

23 A. Yes.

24 Q. During the time you were employed as a store  
25 manager, did you ever complain to anyone about not

1 receiving overtime?

2 A. No.

3 Q. And you understood that as a salaried exempt  
4 employee, you were not -- you would not be receiving  
5 overtime; is that correct?

6 A. Correct.

7 MS. LIVELY: That's all I have. Thank you.

8 MR. SABA: Thank you.

9 We take a quick break.

10 (Recess from 5:03 p.m. to 5:39 p.m.)

11

12

EXAMINATION

13 BY MR. SABA:

14 Q. Okay. Mr. Whindom, thank you for bearing with  
15 us. We know it's been a long day. I have a couple  
16 questions that I want to ask you.

17 A. Okay.

18 Q. As a store manager at Rite Aid, did you feel  
19 that you had the discretion to properly manage your  
20 store?

21 MS. LIVELY: Objection; vague.

22 THE WITNESS: No.

23 BY MR. SABA:

24 Q. Why not?

25 A. All policies were dictated from corporate. We

1 were told where to put the merchandise, we were told how  
2 to price the merchandise. We were told basically how to  
3 run the store by corporate standards and it was dictated  
4 by corporate.

5 Q. Prior to joining Rite Aid, you were a store  
6 manager at Skaggs Drug; is that correct?

7 A. Correct.

8 Q. Generally speaking, how did your managerial  
9 responsibilities and duties in that role compare to  
10 being a store manager at Rite Aid?

11 A. Basically it was a 180 degree turn. Skaggs, I  
12 was able to buy my own merchandise, price my own  
13 merchandise, display my own merchandise where I deemed  
14 fit. Rite Aid, I could not do this.

15 Q. Were you responsible for the profitability at  
16 your stores as a store manager at Skaggs Drug?

17 A. Yes.

18 Q. And did you feel as though you had the autonomy  
19 in that previous position to control profitability?

20 A. Yes.

21 Q. How did that compare to being a store manager  
22 at Rite Aid?

23 A. I could price my own merchandise. Rite Aid, I  
24 could not. I could display my own merchandise where I  
25 wanted it. Rite Aid tells me where to put the

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1 merchandise. I could order promotions. Rite Aid orders  
2 the promotions for me, tells me where to put it. We did  
3 very well in pricing our own merchandise at Skaggs Drug.  
4 Our profitability was there. Rite Aid, although the  
5 profit is there to a certain extent, the sell-through on  
6 merchandise, which we have to mark down if it isn't a  
7 sell-through, takes away from the profitability of the  
8 store.

9 Q. Okay. I want to talk to you a little bit about  
10 the hours that you worked --

11 A. Okay.

12 Q. -- at Rite Aid. Okay?

13 For clarification -- and I guess we can talk  
14 just generally about the last four years -- on average,  
15 how many hours per week percentage-wise did you work as  
16 a store manager at Rite Aid?

17 MS. LIVELY: Objection; vague.

18 BY MR. SABA:

19 Q. Do you understand what I'm --

20 A. No.

21 Q. -- what I'm asking you? Let me ask it again.  
22 In 2007, how many hours per week did you work an  
23 average?

24 MS. LIVELY: Asked and answered.

25 THE WITNESS: About 65.



1 overtime involved.

2 Q. So was that your -- did you believe that to be  
3 your overtime pay?

4 A. I have no idea. There was no explanation.

5 Q. All right. You were paid biweekly; is that  
6 correct?

7 A. Correct.

8 Q. Did your compensation change on a weekly basis  
9 when you went hourly?

10 A. Well, you got paid for every 15 minutes over  
11 45. Did I make more as an hourly employee? Yes.

12 Q. Okay.

13 A. Versus an exempt employee on a  
14 biweek-by-biweek.

15 Q. All right. Ms. Lively asked you a lot about  
16 your responsibilities as a store manager. I want to  
17 talk to you a little bit about what your duties were as  
18 a store manager.

19 Do you understand what I mean when I say  
20 "nonmanagerial duties"?

21 A. Yes.

22 Q. What --

23 MS. LIVELY: Calls for a legal conclusion.

24 BY MR. SABA:

25 Q. Do you understand what -- what is

1 "nonmanagerial duties"?

2 A. Any duties other than supervising the running  
3 of the store.

4 Q. Okay. And what nonmanagerial duties did you do  
5 as a store manager at Rite Aid?

6 A. Unloading the truck, putting merchandise on the  
7 sales floor, doing the blue dot system, pulling back  
8 room merchandise, doing planograms, sometimes sweeping  
9 the floor, facing the floor.

10 Q. Cleaning the store?

11 A. Yes.

12 Q. What is "back room pull sheets"?

13 A. Back room pull sheets is merchandise that was  
14 sold the previous day that's basic merchandise and  
15 nonbasic merchandise. Could be end cap merchandise,  
16 side end merchandise which is not basic. Those change  
17 out on a monthly basis.

18 Now, this merchandise was sold the previous  
19 day. Might have ten in the back room, you sold one, you  
20 take one out of the back room. You have to scan it with  
21 a scanner to reduce the number in the back room, put it  
22 on the floor, merchandising on the floor.

23 Q. Over the last three years, what percentage of  
24 your time do you believe you spent on nonmanagerial  
25 tasks in any given week?

1 MS. LIVELY: Calls for speculation.

2 THE WITNESS: 65, 70 percent.

3 BY MR. SABA:

4 Q. And you testified earlier that you would work  
5 the register at times; is that correct?

6 A. That's correct.

7 Q. How can you properly supervise your employees  
8 when you're working a register?

9 MS. LIVELY: Objection; assumes facts not in  
10 evidence.

11 THE WITNESS: Outside of the register area, you  
12 cannot. You cannot leave. If you're cashiering, you  
13 cannot leave your register.

14 BY MR. SABA:

15 Q. I want to talk to you a little bit about the  
16 differences between an associate store manager and a  
17 store manager. All right?

18 A. Associate store manager?

19 Q. Uh-huh. An ASM.

20 MS. LIVELY: An assistant store manager?

21 BY MR. SABA:

22 Q. Excuse me. An assistant -- yes, it's a long  
23 day. Assistant store manager or we've been using ASM.  
24 All right?

25 A. Right.

1 Q. Generally speaking, what do you believe the  
2 differences are between a store manager and an  
3 assistant -- or assistant store manager?

4 A. None.

5 Q. Is the assistant store manager ultimately  
6 responsible for the profitability of the store?

7 A. Yes.

8 Q. Why?

9 A. Because they are also there to implement the  
10 plans set down from corporate as pricing --

11 Q. Okay.

12 A. -- merchandise, locations.

13 Q. All right. Let's talk about a few other  
14 questions -- or let me ask you a few other questions and  
15 we can get you out of here.

16 Did you have the discretion to schedule  
17 overtime for your employees?

18 MS. LIVELY: Asked and answered.

19 THE WITNESS: No.

20 BY MR. SABA:

21 Q. Why not?

22 A. Not in the budget.

23 Q. Did you have the discretion to change the  
24 budget?

25 A. To change the budget?

1 Q. Uh-huh.

2 A. No.

3 Q. Why not?

4 A. Sent down from corporate. We had no say in  
5 what -- we had no say in changing the budget that was  
6 sent down from corporate.

7 Q. How was it sent down to you?

8 A. It was sent down through SYSM. It is also --  
9 as far as the salaries, on a weekly basis -- it's in  
10 StaffWorks of how many hours that we can -- we are  
11 allowed for any given week.

12 Generally the StaffWorks is out three weeks.  
13 Corporate has the ability to change the hours up and  
14 down, generally down, and adjust those. We don't -- we  
15 do not as store managers.

16 Q. Did you have the final authority to terminate  
17 employees at your store?

18 A. No.

19 Q. Did you have the final authority to discipline  
20 your employees?

21 A. Yes. And --

22 Q. And -- sorry.

23 A. Depending upon the severity of the infraction.  
24 Okay? A lot of it as far as discipline is concerned was  
25 dealt through write-ups. More severe would be district

1 manager, HRM, and they would be involved immediately  
2 depending upon the severity of the infraction of the  
3 employee.

4 Q. When you disciplined an employee through a  
5 write-up, was the district manager involved?

6 A. No.

7 Q. At what the point in time did the district  
8 manager get involved?

9 A. Final warning, final written warning.

10 Q. When you wrote up an employee for discipline,  
11 where did that write-up go?

12 A. In their employee file.

13 Q. And what steps did you do to get it to the  
14 employee file?

15 A. Open a drawer and put it in.

16 Q. Oh, so you the kept the employee files?

17 A. Yes.

18 Q. At your store?

19 A. The only employee files that were not kept at  
20 store level were managers, assistant managers and  
21 pharmacists.

22 Q. Did the -- did HR have any of your associate  
23 employee files or copies of them?

24 A. Hourly --

25 Q. Yeah.

DECLARATION UNDER PENALTY OF PERJURY

I, RUSSELL H. WHINDOM, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken August 11, 2011; that I have made such corrections as appear noted herein, in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_,  
2011, at \_\_\_\_\_, California.

\_\_\_\_\_  
RUSSELL H. WHINDOM

# Exhibit MMM



Yatram Indergit, et al. v. Rite Aid Corporation, et al.  
Kyle Wilson

1:08-CV-09361-PGG-HBP  
October 1, 2011

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, on behalf	)	
of himself and others	)	
similarly situated,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
vs.	)	1:08-CV-09361-PGG-HBP
	)	
RITE AID CORPORATION, RITE	)	
AID OF NEW YORK, INC.,	)	
FRANCIS OFFOR as Aider and	)	
Abettor,	)	
	)	
Defendants.	)	

DEPOSITION OF

KYLE WILSON

October 1, 2011  
9:49 a.m.

Gilbert & Jones  
1607 Norwich Street  
Brunswick, Georgia

Debbie Gilbert, Certified Court Reporter, B-515

1 A. That was my title, yes.

2 Q. And again that was in July of '06?

3 A. That's correct.

4 Q. And then you were promoted to store  
5 manager in November of '06?

6 A. That's correct.

7 Q. And did you go back to 6452?

8 A. Yes.

9 Q. So that's when Monica left and you took  
10 over the store?

11 A. That's correct.

12 Q. And when you went back to 6452 as the  
13 store manager, you were in charge of the store;  
14 correct?

15 A. I was in charge of running the day-to-day  
16 operations, yes.

17 Q. And you were in charge of all the store  
18 employees?

19 MS. SCOTT: Objection, form.

20 THE WITNESS: Yes, they reported to me.

21 Q. (By Mr. Scott) And you supervised all the  
22 employees in the store; right?

23 A. Assured, yeah, the daily tasks were  
24 completed.

25 Q. And you directed all your work; right?

1 MS. SCOTT: Objection, form.

2 THE WITNESS: On days I was there, yes.

3 Q. (By Mr. Scott) And on days that you  
4 weren't there, the other managers of the store  
5 directed their work?

6 A. That would be correct.

7 Q. And everyone in the store was ultimately  
8 responsible to you?

9 A. Yes.

10 MS. SCOTT: Objection to form.

11 Q. (By Mr. Scott) And you scheduled the time  
12 of all the employees in store?

13 A. I did most of the scheduling, yes.

14 Q. You ran payroll for the store?

15 A. No. Payroll was determined by corporate.

16 Q. When you say "determined by corporate,"  
17 what do you mean?

18 A. They gave us a set number of hours or  
19 dollars to use.

20 Q. Your store had a labor budget; right?

21 A. Yes.

22 Q. And within that labor budget, you could  
23 allocate the budget hours to the store employees?

24 MS. SCOTT: Objection, form.

25 THE WITNESS: Yes. They had a computer

1 program that determined the schedule that we  
2 would have to generate using the program.

3 Q. (By Mr. Scott) Was that Staff Works at  
4 the time?

5 A. Yes, it was.

6 Q. Staff Works generates a schedule based on  
7 available labor hours and anticipated need; correct?

8 A. Yes.

9 Q. And then you can alter the Staff Works  
10 schedule if you think that it doesn't accurately  
11 forecast the needs of the store?

12 MS. SCOTT: Objection, form.

13 THE WITNESS: Yes, you could make edits to  
14 it.

15 Q. (By Mr. Scott) If someone was, for  
16 example, on vacation, you could take that person off  
17 the schedule and put somebody else in; right?

18 A. You generally tell the program prior to it  
19 generating the schedule, and it would generate a  
20 schedule without that person on the schedule.

21 Q. So if someone came to you and said, "Mr.  
22 Wilson, I would like to take a week off," you would  
23 take them out of the Staff Works schedule for that  
24 particular week if you allowed it?

25 A. Yes, prior to generating the schedule.

1 Q. Okay. When you took over 6452, how many  
2 employees did you supervise?

3 A. I don't remember exactly, but it was  
4 probably the same, six or seven, and then it would  
5 have been I guess it was just two other members of  
6 management at the time.

7 Q. So between eight and nine people total?

8 A. That's correct.

9 Q. And did you have a salaried ASM in 6452?

10 A. That's correct.

11 Q. And who was that person?

12 A. Initially it was Brandon --

13 Q. The same Brandon as before?

14 A. -- Pappos. That's correct.

15 Q. And then was he promoted out of that  
16 store?

17 A. He was transferred. He was not promoted  
18 at that time.

19 Q. And how long did Brandon work as an ASM  
20 under you?

21 A. Just a couple months.

22 Q. Do you remember which store he was  
23 transferred to?

24 A. I believe it was 5239.

25 Q. When Brandon was transferred to 5239, who

1 Q. Did you have a loading bay?

2 A. Yes.

3 Q. And did the truck driver actually  
4 physically move the product off the truck?

5 A. Usually but not always.

6 Q. And he would bring it into the loading bay  
7 and then you and the other store employees would  
8 bring the merchandise into the warehouse?

9 MS. SCOTT: Objection, form.

10 Q. (By Mr. Scott) Is that right? Tell me  
11 what happened.

12 A. Depending -- depending on the week, but  
13 typically the truck driver would dock the truck and  
14 then unload it with you and then leave it in the  
15 middle of the warehouse and then leave.

16 On occasion they would what they call the  
17 spot the truck, and so they would drop the trailer  
18 there and they always ran doubles, so they had two  
19 separate trailers and take the first trailer to  
20 another store and unload them and come back to your  
21 store, and then typically if they were spotted, we  
22 were responsible for physically pulling it off the  
23 truck ourselves.

24 Q. And how often did that spotting occur?

25 A. At Sehome, probably every other week or

1 about half the time, if not more. At the other  
2 stores, it did not happen with any real frequency.

3 Q. And when you had the guy leave the store,  
4 when you had the truck driver leave the store, did  
5 that increase the amount of time it took to offload  
6 the truck if he wasn't helping in offloading the  
7 truck himself?

8 A. Yeah, it would add another 30 or 40  
9 minutes, maybe, not a significant amount of time but  
10 a little bit.

11 Q. How many hours a week did you work as a  
12 store manager in 2007?

13 A. Probably around 55 hours a week.

14 Q. Did it vary by week?

15 A. Yes.

16 Q. Based on what?

17 A. A number of different factors. Whether it  
18 was -- holidays, like the Christmas season, it was  
19 dictated that we would work six days a week. Or any  
20 other seasonal conversions, there is usually the  
21 increased work load.

22 Q. Did you ever tell your district manager  
23 "I'm only working 40 hours a week"?

24 A. No.

25 Q. How many hours a week did you work in

1 2008?

2 A. Approximately the same 55 to 60, I would  
3 say as well.

4 Q. And again it would change by week?

5 A. A little, I mean, but -- we were expected  
6 to work a minimum of 50.

7 Q. Did you take two weeks' vacation every  
8 year?

9 A. Yes.

10 Q. In 2009, how many hours a week did you  
11 work as a store manager?

12 A. Approximately the same.

13 Q. 2010?

14 A. Towards the end of 2010, I would say it  
15 started increasing.

16 Q. To what?

17 A. Closer to 60 hours a week.

18 Q. 2011?

19 A. About the same, closer to 60, but not  
20 every week it was 60.

21 Q. It varied based on what was going on?

22 A. Yes.

23 Q. And based on the managers that you had on  
24 staff?

25 A. Yes.



1 Q. And based on whether employees called in  
2 sick or not?

3 A. On occasion, but that was one of the  
4 smaller factors.

5 (Wilson Exhibit 12 was marked for  
6 identification.)

7 Q. (By Mr. Scott) I hand you what's been  
8 marked as Exhibit 12.

9 All right, Exhibit 12 is a job description  
10 for the position of store manager at Rite Aid;  
11 correct?

12 A. That's correct.

13 Q. Have you seen this document before?

14 A. Yeah, I believe I have.

15 Q. When?

16 A. It was available on the portal.

17 Q. What I want to do is walk you through it.

18 Take a look, please, at the summary  
19 paragraph and tell me, read it to yourself and tell  
20 me if you disagree with any of the statements made in  
21 the summary paragraph in relation to the job duties  
22 and responsibilities that you had as a store manager  
23 at Rite Aid?

24 A. It's generally -- it's generally, I guess,  
25 the -- it leaves out a lot of the actual tasks that

1 MR. SCOTT: I'm going reserve the  
2 remainder of my time for redirect.

3 MS. SCOTT: Can we just go off the record  
4 for a few minutes?

5 (Recess from 3:24 p.m. to 3:28 p.m.)

6 EXAMINATION

7 BY MS. SCOTT:

8 Q. Good afternoon, Mr. Wilson. It's now my  
9 time to ask you some questions.

10 A. All right.

11 Q. And just as I was objecting to some of  
12 Justin's questions, he is allowed to object to my  
13 questions, but just as you were allowed to answer his  
14 questions, if he objects, you can also go ahead and  
15 answer my questions. Do you understand?

16 A. All right, yes.

17 Q. Do you know what I mean when I say  
18 non-managerial tasks?

19 A. Typically anything beyond the supervision,  
20 training, disciplinary functions of the store.

21 Q. And what would you consider to be  
22 non-managerial tasks?

23 A. Cashiering, stocking shelves, the zeros or  
24 Blue Dot Program, running photo, those types of  
25 functions.

1 Q. Would you consider cleaning to be a  
2 non-managerial task?

3 A. Yes.

4 Q. Would you consider pricing items to be a  
5 non-managerial task?

6 MR. SCOTT: Object to form.

7 THE WITNESS: Yes.

8 Q. (By Ms. Scott) Are there any other types  
9 of non-managerial tasks you can think of?

10 A. Not off the top of my head.

11 Q. And did you complete all of those  
12 non-managerial tasks that you just listed while you  
13 were a store manager at Rite Aid?

14 MR. SCOTT: Object to form.

15 THE WITNESS: Yes.

16 Q. (By Ms. Scott) What percentage of your  
17 time as a store manager at Rite Aid did you spend  
18 completing non-managerial tasks?

19 MR. SCOTT: Object to form.

20 THE WITNESS: More than half.

21 Q. (By Ms. Scott) And if you will look at  
22 Exhibit Number 12 for me, do you see any of those  
23 non-managerial tasks that you just listed listed on  
24 Exhibit 12, which is the store manager Rite Aid job  
25 description?

1 A. No.

2 Q. Would you consider the non-managerial  
3 tasks that you just listed to be duties that you were  
4 required to do as a store manager at Rite Aid?

5 MR. SCOTT: Object to form.

6 THE WITNESS: Yes, on a daily basis.

7 Q. (By Ms. Scott) And did assistant store  
8 managers also have to complete those non-managerial  
9 tasks?

10 A. Yes.

11 Q. So, for instance, the assistant store  
12 manager Pamela would have had to complete those  
13 non-managerial tasks as an assistant store manager at  
14 Rite Aid?

15 MR. SCOTT: Object to form.

16 THE WITNESS: Yes.

17 Q. (By Ms. Scott) And if you will now look  
18 at Exhibit 13 for me, which is the assistant store  
19 manager Rite Aid job description, do you see any of  
20 those non-managerial tasks listed on Exhibit 13?

21 A. No.

22 Q. Would you consider those non-managerial  
23 tasks to have been duties and responsibilities that  
24 Rite Aid expected its assistant store managers such  
25 as Pamela to do?

1 MR. SCOTT: Object to form.

2 THE WITNESS: Yes.

3 Q. (By Ms. Scott) Did doing these  
4 non-managerial duties or tasks affect how you were  
5 able to run the store while you were a store manager  
6 at Rite Aid?

7 MR. SCOTT: Object to form.

8 THE WITNESS: Yes.

9 Q. (By Ms. Scott) In what way?

10 A. They took up the majority of my time so I  
11 was unable to adequately spend time doing performance  
12 reviews and training and developing associates.

13 Q. Did the non-managerial tasks take away  
14 from your managerial duties?

15 A. Yes.

16 Q. Did doing the non-managerial tasks affect  
17 the way that you were able to supervise your staff --

18 MR. SCOTT: Object to form.

19 Q. (By Ms. Scott) -- while you were a store  
20 manager at Rite Aid?

21 A. Yes.

22 Q. Did Rite Aid still expect you to supervise  
23 all of your employees while you were engaged in  
24 non-managerial duties?

25 A. Yes.

1 Q. And was it difficult to do so?

2 A. Yes.

3 Q. In what way?

4 A. Well, the example of doing Blue Dots, I  
5 felt like I spent a lot of time doing that every day,  
6 so I'm unable to -- anything else I viewed as a  
7 priority, I was unable to focus on, or sit down with  
8 an associate. Training was always -- always an issue  
9 because there was never a sufficient amount of time  
10 for training to develop associates.

11 Q. And if you were, for instance, completing  
12 Blue Dots and you had an employee at the cash  
13 register ringing up customers, were you able to  
14 supervise or watch that employee while you were doing  
15 the Blue Dots?

16 MR. SCOTT: Object to form.

17 THE WITNESS: No.

18 Q. (By Ms. Scott) Would you say that these  
19 duties prevented you from truly being able to manage  
20 your store as a store manager at Rite Aid?

21 MR. SCOTT: Object to form.

22 THE WITNESS: Yes.

23 Q. (By Ms. Scott) Who made the final  
24 decision regarding setting payroll while you were a  
25 store manager at Rite Aid?

1           A.       The corporate -- I don't know how much say  
2       my district manager had in it. I would assume some.

3           Q.       And who had the final decision regarding  
4       setting the budget while you were a store manager at  
5       Rite Aid?

6           A.       Corporate did.

7           Q.       Do you believe that Rite Aid created a  
8       budget policy that left most if not all stores  
9       inadequately staffed?

10           MR. SCOTT: Object to form.

11           THE WITNESS: Yes, most definitely.

12           Q.       (By Ms. Scott) Do you believe that this  
13       inadequate staffing led store managers and assistant  
14       store managers to have to complete non-managerial  
15       tasks?

16           MR. SCOTT: Object to the form.

17           THE WITNESS: Yes.

18           Q.       (By Ms. Scott) You testified earlier that  
19       you worked more hours per week during your last years  
20       at Rite Aid; is that correct?

21           A.       Yes.

22           Q.       Do you know why this is?

23           A.       Because the work load had continued to  
24       increase due to initiatives, such as the Blue Dot  
25       Initiative took up more and more of my time, but I

1 was still expected to try and complete the other --  
2 other weekly and daily tasks as well.

3 Q. Did the labor budget change during your  
4 latter years at Rite Aid?

5 A. Yes. It continued to go in a downward  
6 direction. My first year at Sehome our budget was  
7 approximately a thousand dollars less per week than  
8 the previous year.

9 Q. Did the fact that you had less hours in  
10 your labor budget contribute to the fact that you had  
11 to do non-managerial tasks?

12 A. Yes.

13 MR. SCOTT: Object to the form.

14 Q. (By Ms. Scott) And did the labor hours --  
15 strike that.

16 Did the fact that the labor budget  
17 decreased during your later years at Rite Aid as a  
18 store manager make you have to work more hours per  
19 week than you were working when you started as the  
20 store manager at Rite Aid?

21 MR. SCOTT: Object to form.

22 THE WITNESS: Yes.

23 MS. SCOTT: Okay. That's all I have.

24 Pass the witness.

25



1

2

## DEPOSITION OF KYLE WILSON /DDG

3

4

I do hereby certify that I have read all questions propounded to me and all answers given by me on October 1, 2011, taken before Debbie Gilbert, and that:

5

6

1) There are no changes noted.

2) The following changes are noted:

7

8

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or the Official Code of Georgia Annotated 9-11-30(e), both of which read in part:

9

Any changes in form or substance which you desire to make shall be entered upon the deposition...with a statement of the reasons given...for making them.

10

Accordingly, to assist you in effecting corrections, please use the form below:

11

12

Page No.                      Line No.                      should read:

13

14

Page No.                      Line No.                      should read:

15

Page No.                      Line No.                      should read:

16

17

Page No.                      Line No.                      should read:

18

Page No.                      Line No.                      should read:

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Page No.                      Line No.                      should read:

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Page No.                      Line No.                      should read:

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Page No.                      Line No.                      should read:

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Page No.                      Line No.                      should read:

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Page No.                      Line No.                      should read:

## DEPOSITION OF KYLE WILSON/DDG

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Page No. Line No. should read:

Page No. Line No. should read:

Page No. Line No. should read:

If supplemental or additional pages are necessary,  
please furnish same in typewriting annexed to this  
deposition.

KYLE WILSON

Sworn to and subscribed before me,

This the day of , 20 .

Notary Public

My commission expires:

Exhibit NNN

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 YATRAM INDERGIT, on behalf of  
5 himself and all others similarly  
6 situated,

7 Plaintiff, 08 CV 9361 (PGG)

8 -against-

9 RITE AID CORPORATION, RITE AID  
10 OF NEW YORK, INC. and FRANCIS  
11 OFFOR as Aider and Abettor,  
12 Defendants.  
13 -----X

14 250 Park Avenue  
15 New York, New York  
16 January 26, 2012  
17 9:10 a.m.

18 CONFIDENTIAL

19 Videotaped Deposition of ROB  
20 AUGUSTINE, taken by Plaintiff, pursuant to  
21 Notice, held at the above-mentioned time and  
22 place, before Robin LaFemina, a Certified  
23 LiveNote Reporter and Notary Public within  
24 and for the State of New York.  
25

Page 3

1 IT IS HEREBY STIPULATED AND AGREED,  
2 by and between the attorneys for the  
3 respective parties herein, that filing and  
4 sealing be and the same are hereby waived.  
5

6 IT IS FURTHER STIPULATED AND AGREED  
7 that all objections, except as to the form  
8 of the question, shall be reserved to the  
9 time of the trial.

10 IT IS FURTHER STIPULATED AND AGREED  
11 that the within deposition may be signed and  
12 sworn to before any officer authorized to  
13 administer an oath, with the same force and  
14 effect as if signed and sworn to before the  
15 officer before whom the within deposition  
16 was taken.  
17

18  
19  
20  
21  
22  
23  
24  
25  
**CONFIDENTIAL**

Page 2

1 A P P E A R A N C E S:

2 VALLI KANE & VAGNINI LLP  
3 Attorneys for Plaintiff  
4 600 Old Country Road  
5 Garden City, New York 11530  
6

7 BY: ANEEBA REHMAN, ESQ.  
8 ANDREW KIMBLE, ESQ.

9 EPSTEIN BECKER & GREEN, P.C.  
10 Attorneys for Defendants  
11 One Gateway Center  
12 Newark, New Jersey 07102-5311

13 BY: PATRICK G. BRADY, ESQ.

14 ALSO PRESENT:  
15 TOM ASTA, Videographer  
16

17 --oo0oo--  
18  
19  
20  
21  
22  
23  
24  
25

Page 4

1 Augustine - Confidential

2 THE VIDEOGRAPHER: This is the  
3 deposition of Rob Augustine taken  
4 pursuant to Notice beginning at 9:10  
5 a.m. Valli Kane & Vagnini LLP,  
6 attorneys for Plaintiff, 600 Old  
7 Country Road, Garden City, New York,  
8 11530, phone number 516-203-7180,  
9 United States District Court, Southern  
10 District of New York, Yatram Indergit  
11 on behalf of himself and all other  
12 similarly situated as Plaintiff versus  
13 Rite Aid Corporation, Rite Aid of New  
14 York, Inc. and Francis Offor as Aider  
15 and Abettor as Defendants, Amended  
16 Complaint 08 CV 9631 (PGG).

17 R O B A U G U S T I N E,  
18 after having been first duly sworn by  
19 Robin LaFemina, a Notary Public within  
20 and for the State of New York, was  
21 examined and testified as follows:

22 EXAMINATION BY  
23 MS. REHMAN:

24 Q. Hi, Mr. Augustine, we met  
25 briefly off the record. My name is Aneeba

Page 109

1 Augustine - Confidential  
 2 name, I apologize.  
 3 A. Hourly.  
 4 Q. Kristi Glosser?  
 5 A. Hourly.  
 6 Q. John Appleford?  
 7 A. Salary.  
 8 Q. Ted Mieatta?  
 9 A. Hourly.  
 10 Q. Dan Scime?  
 11 A. Salaried.  
 12 Q. Gary Ostrowski?  
 13 A. Hourly.  
 14 Q. Jeff Calabrese?  
 15 A. I believe he is salaried.  
 16 Q. Lisa Kaufman?  
 17 A. Hourly.  
 18 Q. John Schwab?  
 19 A. Salaried.  
 20 Q. The store managers in your  
 21 district which you've named as hourly  
 22 employees, do you know whether or not they  
 23 were always hourly store managers under your  
 24 district?  
 25 A. They were not always -- well --

Page 110

1 Augustine - Confidential  
 2 Q. As far as you know, since you  
 3 started as a district manager.  
 4 A. Ted Mieatta was recently  
 5 promoted, so his entire time as a store  
 6 manager has been hourly.  
 7 Q. Was there a change, a recent --  
 8 strike that.  
 9 Was there recently a change in  
 10 some of the store managers going from salary  
 11 to hourly in your district?  
 12 MR. BRADY: Object to the form.  
 13 A. In what time frame?  
 14 Q. You mentioned recently, so --  
 15 A. Well, he was recently promoted.  
 16 He was an assistant manager. So he's never  
 17 been a salaried manager.  
 18 Q. Okay.  
 19 A. I believe the same would be true  
 20 for store 1511.  
 21 Q. Since your employment as a  
 22 district manager in 1999, was there a point  
 23 where your store managers were switched from  
 24 salary employees to hourly employees?  
 25 A. Some of my store managers were.

Page 111

1 Augustine - Confidential  
 2 Q. Do you recall when?  
 3 A. Specifically, no.  
 4 Q. Do you recall if it was a year  
 5 ago, two years ago, three years ago?  
 6 A. Within the last two to three  
 7 years.  
 8 Q. Were you at all involved in the  
 9 decision as to whether or not some of your  
 10 store managers would be switched from salary  
 11 to hourly?  
 12 A. I was not.  
 13 Q. Who informed you about the switch?  
 14 A. I believe our human resource  
 15 person.  
 16 Q. Who was your human resource  
 17 person?  
 18 A. Deb Breed.  
 19 Q. Do you recall what she told you?  
 20 A. I don't.  
 21 Q. Do you recall if she told you  
 22 why they were being switched?  
 23 A. I do not.  
 24 Q. Do you recall asking why they  
 25 were being switched?

Page 112

1 Augustine - Confidential  
 2 A. No, I do not. And if you're  
 3 asking -- are you asking for specific  
 4 reasons why? I mean, that was a business  
 5 decision based off of store volume, so I  
 6 understood why they were being switched, but  
 7 did I ask specifically why an individual  
 8 was, no.  
 9 Q. You said there was a business  
 10 decision based on volume.  
 11 A. Store volume.  
 12 Q. Store volume.  
 13 What is your understanding of  
 14 that decision?  
 15 A. That the stores were placed into  
 16 different levels and that based off of front  
 17 end volume, managers would be classified as  
 18 either salaried or hourly.  
 19 Q. And do you recall what level of  
 20 volume a store needed to be at for a store  
 21 manager to be hourly?  
 22 A. I don't. I know a ballpark  
 23 figure, but I don't know what level.  
 24 Q. What is the ballpark figure that  
 25 you do know?

28 (Pages 109 to 112)

Page 113

1 Augustine - Confidential  
 2 A. I believe it was approximately  
 3 \$24,000 a week and change. I could be wrong  
 4 on that.  
 5 Q. Okay.  
 6 Do you recall whether or not,  
 7 were you involved in informing the store  
 8 managers about this change?  
 9 A. I was.  
 10 Q. Was your regional vice president  
 11 involved?  
 12 A. No, he was not.  
 13 Q. Was HR involved?  
 14 A. No, they were not.  
 15 Q. How did you inform your store  
 16 managers who were being switched from salary  
 17 to hourly that they were being switched?  
 18 A. I had individual conversations  
 19 with them.  
 20 Q. Were these conversations over  
 21 the phone?  
 22 A. They were not.  
 23 Q. Were they in person?  
 24 A. They were.  
 25 Q. Did these conversations take

Page 114

1 Augustine - Confidential  
 2 place on a conference call?  
 3 A. They did not. They were in my  
 4 office.  
 5 Q. Was it a group meeting or  
 6 individual meeting?  
 7 A. Individual.  
 8 Q. And when you had these individual  
 9 meetings with the store managers who were  
 10 being switched from salary to hourly, what  
 11 did you tell them during these meetings?  
 12 A. I explained the change, I  
 13 explained the change in rate of pay for them  
 14 from a salaried rate to an hourly rate, I  
 15 explained the change in their benefit, and  
 16 that may be all.  
 17 Q. Did the change from salary to  
 18 hourly cause changes in benefits for some of  
 19 these employees?  
 20 A. I believe it impacted their  
 21 long-term disability.  
 22 Q. How did it impact their long-  
 23 term disability?  
 24 A. I don't recall.  
 25 Q. Did you explain to these

Page 115

1 Augustine - Confidential  
 2 individual store managers what the reason  
 3 was for the change?  
 4 MR. BRADY: Object to the form.  
 5 A. I explained that it was a  
 6 business decision based off of volume.  
 7 Q. Did any of the store managers  
 8 have questions during these meetings about  
 9 the change?  
 10 A. Yes.  
 11 Q. What were some of the questions?  
 12 A. How their pay would be impacted.  
 13 That was --  
 14 Q. That was the main question?  
 15 A. Yes.  
 16 Q. Do you recall any other question?  
 17 A. Not specifically.  
 18 Q. And how did you respond to a  
 19 question like that?  
 20 A. I worked them through the rate  
 21 of pay that they were going through as  
 22 hourly and how it equated to the same rate  
 23 as pay that they were going to make as  
 24 salary and that it wasn't a pay adjustment.  
 25 Q. After this change, do the store

Page 116

1 Augustine - Confidential  
 2 managers who were switched from salary to  
 3 hourly now receive overtime pay?  
 4 A. They're eligible for overtime  
 5 pay; yes.  
 6 Q. Are they eligible for overtime  
 7 pay for any hour worked over 40?  
 8 A. Yes.  
 9 Q. And do you know how many  
 10 overtime hours each of the store managers in  
 11 your district work currently?  
 12 A. It varies based on the manager.  
 13 Q. Are they limited to 45 hours?  
 14 A. No.  
 15 Q. Are they expected to work at  
 16 least 45 hours?  
 17 A. No.  
 18 Q. Is there any expectation of how  
 19 many hours they're supposed to work?  
 20 A. The expectation is that they  
 21 work enough hours to maintain full-time  
 22 benefits.  
 23 Q. If an hourly store manager now  
 24 wants to work over 40 hours a week to get  
 25 their job done, do they have to seek

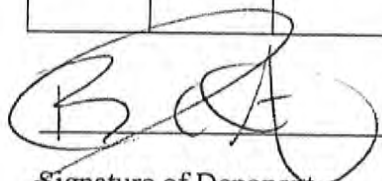


**ERRATA SHEET**

CASE: Indergit v. Rite Aid

DEPOSITION OF: Robert Augustine

PAGE	LINE	CORRECTION	REASON FOR CHANGE
26	18	"financial" should be "customer"	Correct stenographic error
33	9-11	"Formally, no, but I had spoken" should be "Formally, I applied approximately a year and a half before my promotion. Thereafter, I spoke"	Clarify the record
119	24-25	"I don't recall" should be "I recall we had a script but I didn't use one."	Conform with the facts
149	11-12	Add "to my knowledge" following the sentence "It's no longer in existence."	Clarify the record
237:23-238:4	237:23-238:4	Add: "We do not participate in political or religious events."	Clarify the record.
304	21-22	"Less than six months" should be "approximately a year"	Conform with the facts



Signature of Deponent

3/5/2012

Date

Exhibit 000



Page 1

Page 3

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 -----X  
5 YATRAM INDERGIT, on behalf of  
6 himself and all others similarly  
7 situated, Plaintiff, 08 CV 9361 (PGG)  
8 -against-  
9 RITE AID CORPORATION, RITE AID  
10 OF NEW YORK, INC. and FRANCIS  
11 OFFOR as Aider and Abettor,  
12 Defendants.  
13 -----X  
14  
15 250 Park Avenue  
16 New York, New York  
17 January 27, 2012  
18 9:43 a.m.  
19  
20 CONFIDENTIAL  
21  
22 Videotaped Deposition of MICHAEL  
23 BARRETT, taken by Plaintiff, pursuant to  
24 Notice, held at the above-mentioned time and  
25 place, before Robin LaFemina, a Certified  
LiveNote Reporter and Notary Public within  
and for the State of New York.

1  
2 IT IS HEREBY STIPULATED AND AGREED,  
3 by and between the attorneys for the  
4 respective parties herein, that filing and  
5 sealing be and the same are hereby waived.  
6 IT IS FURTHER STIPULATED AND AGREED  
7 that all objections, except as to the form  
8 of the question, shall be reserved to the  
9 time of the trial.  
10 IT IS FURTHER STIPULATED AND AGREED  
11 that the within deposition may be signed and  
12 sworn to before any officer authorized to  
13 administer an oath, with the same force and  
14 effect as if signed and sworn to before the  
15 officer before whom the within deposition  
16 was taken.  
17  
18  
19  
20  
21  
22  
23  
24  
25

CONFIDENTIAL

Page 2

Page 4

1  
2 A P P E A R A N C E S:  
3  
4 VALLI KANE & VAGNINI LLP  
5 Attorneys for Plaintiff  
6 600 Old Country Road  
7 Garden City, New York 11530  
8  
9 BY: ANEEBA REHMAN, ESQ.  
10 GAVIN McCANDLISH, ESQ.  
11  
12 OGLETREE, DEAKINS, NASH, SMOAK &  
13 STEWART, P.C.  
14 Attorneys for Defendants  
15 One Ninety One Peachtree Tower  
16 191 Peachtree Street, N.E.  
17 Suite 4800  
18 Atlanta, Georgia 30303  
19 BY: JUSTIN SCOTT, ESQ.  
20  
21 ALSO PRESENT:  
22 TOM RUYMEN, Videographer  
23  
24  
25 --oo000--

1 Barrett - Confidential  
2 THE VIDEOGRAPHER: The deposition  
3 of Michael Barrett taken pursuant to  
4 Notice beginning at 9:43 a.m., Yatram  
5 Indergit on behalf of himself and  
6 others similarly situated, Plaintiff,  
7 v. Rite Aid Corporation, Rite Aid of  
8 New York, Inc. and Francis Offor as  
9 Aider and Abettor, 08 CV 9361.  
10 M I C H A E L B A R R E T T ,  
11 after having been first duly sworn by  
12 Robin LaFemina, a Notary Public within  
13 and for the State of New York, was  
14 examined and testified as follows:  
15 EXAMINATION BY  
16 MS. REHMAN:  
17 Q. Hi, Mr. Barrett. My name is  
18 Aneeba Rehman. I'm an attorney with Valli  
19 Kane & Vagnini and we represent the plaintiffs  
20 in this case. We met briefly off the record.  
21 This morning and this afternoon I'm going to  
22 ask you a series of questions, but before we  
23 begin, I just want to go over a couple of  
24 the ground rules.  
25 If you don't understand anything

1 (Pages 1 to 4)

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1 Barrett - Confidential  
2 was instructed, because I was on vacation,  
3 to have a meeting and explain to all the  
4 managers why they were doing that, going  
5 from salary to hourly.

6 Q. Did you have a conversation with  
7 Mr. McIntosh about the switch prior to you  
8 going on vacation?

9 A. I don't remember. I possibly  
10 could have, but I don't remember.

11 Q. Do you recall if you had this  
12 conversation via e-mail? And by e-mail, I  
13 mean Outlook.

14 MR. SCOTT: Object to form.

15 A. I don't remember.

16 Q. Do you recall if you spoke to  
17 Mr. McIntosh about the switch after your  
18 vacation on the phone?

19 A. I don't know if it was face to  
20 face or on the phone. I don't recollect.

21 Q. And you said that Mr. McIntosh  
22 told you that it came down due to the  
23 business changing; correct?

24 A. Uh-hum.

25 Q. Do you recall what change in the

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1 Barrett - Confidential

2 have a conversation with you about the  
3 change?

4 A. Oh, sure.

5 Q. Who had a conversation with you?

6 A. I don't remember any names. I  
7 know there were some conversations, but. . .

8 Q. And what did those conversations  
9 involve?

10 MR. SCOTT: Object to form.

11 A. I don't remember.

12 Q. Do you remember generally if  
13 they asked you questions about the change?

14 A. Probably, but I don't remember,  
15 you know, exactly what -- I would be guessing  
16 to say, you know, they asked me, you know,  
17 why. I don't, you know.

18 Q. Did the store managers who were  
19 not switched from salary to hourly approach  
20 you about the switch?

21 A. No.

22 Q. Do you know whether or not they  
23 were informed about the change?

24 MR. SCOTT: Object to form.

25 A. I'm not sure.

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1 Barrett - Confidential

2 business called the switch?

3 A. The sales. It was based strictly  
4 on the store's volume.

5 Q. What about the volume of the  
6 stores affected the change in --

7 A. The sales were down, you know,  
8 based on sales, based on how -- what the  
9 store's volume was at that time -- at that  
10 time.

11 MR. SCOTT: Make sure you let  
12 her finish her question.

13 THE WITNESS: I'm sorry.

14 A. You weren't finished?

15 Q. It's okay.

16 MR. SCOTT: Just take a second  
17 before you answer.

18 Q. And do you know what that volume  
19 was?

20 A. No, I don't.

21 Q. And did Mr. McIntosh tell you  
22 who instructed him to have a meeting?

23 A. He did not.

24 Q. After the change took place, did  
25 any of your store managers in your district

Page 144

1 Barrett - Confidential

2 Q. Do you know whether or not  
3 Mr. McIntosh held a meeting with all the  
4 store managers who were being switched from  
5 salary to hourly?

6 A. Yes, he had a meeting.

7 Q. Do you know if it was a conference  
8 call or an in person meeting?

9 A. I'm pretty sure it was an in  
10 personal meeting.

11 Q. Do you know whether or not Mr.  
12 McIntosh was provided materials to use  
13 during that meeting?

14 MR. SCOTT: Object to form.

15 A. I'd be guessing, but I'm sure he  
16 was; yes.

17 Q. When Mr. McIntosh told you about  
18 the change, did you agree with it?

19 MR. SCOTT: Object to form.

20 A. I don't remember.

21 Q. Do you believe the switch of  
22 certain store managers in your district from  
23 salary to hourly was a positive switch?

24 MR. SCOTT: Object to form.

25 A. I mean, this is what the company

36 (Pages 141 to 144)

Page 181

1 Barrett - Confidential  
 2 purpose of helping the manager do their job  
 3 for the change of seasons.  
 4 Q. Do you believe profit planners  
 5 help maintain consistency in the stores  
 6 within your district?  
 7 MR. SCOTT: Object to form.  
 8 A. I don't understand the question,  
 9 when you say consistency.  
 10 Q. Do you believe the profit  
 11 planners when they're used in the stores  
 12 within your district help create a uniform  
 13 profit planner within each district, within  
 14 each store in your district?  
 15 A. Every store varies, so, again,  
 16 it's just a guideline for -- it's a nice  
 17 tool to help them do their job.  
 18 Q. Does Rite Aid maintain a dress  
 19 code for store managers, as far as you're  
 20 aware?  
 21 A. Yes. I mean, what is required  
 22 is a shirt and tie for male employees.  
 23 Q. And females have a dress code as  
 24 well?  
 25 A. Just neat, you know, just look

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1 Barrett - Confidential  
 2 professional as far as the dress code.  
 3 That's the gist of it.  
 4 Q. Do you have a dress code as a  
 5 district manager of Rite Aid?  
 6 A. Yes.  
 7 Q. And what is your dress code?  
 8 A. Same as the managers. Shirt and  
 9 tie.  
 10 Q. Each store in your district has  
 11 a truck day; is that right?  
 12 A. Yes, they do.  
 13 Q. Do some stores have more than  
 14 one truck day a week?  
 15 A. No. Some biweekly, too. They  
 16 get a truck every other week. Those are the  
 17 low volume stores.  
 18 Q. Do the stores in your district  
 19 have teams that unload and pack out the  
 20 trucks?  
 21 A. Just store personnel. There's  
 22 no set personnel that all they do is unload  
 23 trucks. No.  
 24 Q. Do you know whether or not store  
 25 managers within your district unload trucks?

Page 183

1 Barrett - Confidential  
 2 A. (Witness gestures.)  
 3 Q. Do you know whether or not store  
 4 managers in your district unload trucks?  
 5 A. That don't unload trucks?  
 6 Q. Do they unload trucks?  
 7 A. Yes, some do.  
 8 Q. Have you ever seen a store  
 9 manager in your district unloading a truck?  
 10 A. Sure. There's not much to  
 11 unloading a truck because most of them come  
 12 on pallets, so it's just -- most of the time  
 13 the truck driver does it, so you're just  
 14 taking it off with a pallet and bringing it  
 15 in the back room, so there's not much to  
 16 unloading a truck. That's not all stores,  
 17 but that's -- that's some stores, maybe half  
 18 that have loading docks can do it that way.  
 19 Q. After the trucks are unloaded  
 20 and they're brought into the back room, does  
 21 that merchandise then have to be packed out  
 22 onto the shelves?  
 23 A. Yes.  
 24 Q. And do you know who in the  
 25 stores within your district pack out these

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1 Barrett - Confidential  
 2 items into the shelves?  
 3 A. Varies by store.  
 4 Q. Have you ever seen store  
 5 managers in your district pack out items on  
 6 the shelves?  
 7 A. Sure. It varies -- as I said,  
 8 it varies by store, but sure, I've seen  
 9 store managers pack out items.  
 10 Q. Do you expect store managers to  
 11 unload the truck?  
 12 MR. SCOTT: Object to form.  
 13 A. Store managers are required to  
 14 have their truck done in 24 hours, so if  
 15 they -- if it's needed, they'll do it. If  
 16 it's not needed, and they've got something  
 17 else they're doing, then they don't need to,  
 18 but it's usually not an issue.  
 19 Q. When you say a truck done, are  
 20 you including stocking the shelves with the  
 21 merchandise that's been packed out?  
 22 A. Yeah.  
 23 Q. Do any stores in your district  
 24 have photo labs?  
 25 A. Very few.

46 (Pages 181 to 184)

Page 185

1 Barrett - Confidential  
 2 Q. The stores in your district  
 3 which do have photo labs, are specific  
 4 associates hired to run those photo labs?  
 5 A. Well, there's a certain age  
 6 limit. I think you have to be over 20 or  
 7 21 -- or over 18 to run it, so -- but  
 8 everybody that's over 18 we train -- we  
 9 train them, you know, to do it. It's not  
 10 hard.  
 11 Q. Have you ever seen store  
 12 managers in your district run photo labs?  
 13 A. Sure.  
 14 Q. Have you ever seen store managers  
 15 in your district cleaning the store while  
 16 you were there?  
 17 A. Cleaning.  
 18 Q. Mopping, sweeping?  
 19 A. I've -- yes, if somebody, a  
 20 customer, say, dropped something that broke,  
 21 you know, if it's just a cashier and the  
 22 manager, well then yeah, I've seen somebody  
 23 clean, yeah. Sure. Not as a rule, but I  
 24 have seen it. Just varies from store to  
 25 store, what you see.

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1 Barrett - Confidential  
 2 Q. Have you seen store managers in  
 3 your district work on cash registers?  
 4 A. Again, varies from store to  
 5 store, but yes, I have seen store managers  
 6 work on cash registers. I don't see it a  
 7 lot, but it happens.  
 8 Q. When you were a store manager  
 9 Friday, did you ever run the cash register?  
 10 A. I'm sure I did, but not as --  
 11 nothing I did a lot of, but I'm sure I did it.  
 12 Q. Do you recall ever cleaning the  
 13 store as a store manager for Rite Aid?  
 14 A. Sure. If you're doing a  
 15 plan-o-gram, you're going to clean the  
 16 shelves before you, you know, put up new  
 17 merchandise up there and new labels, you  
 18 want to clean the shelves, so. . .  
 19 Q. Do you know what inventory days  
 20 are?  
 21 A. Sure.  
 22 Q. What are inventory days?  
 23 A. Inventory days are the days we  
 24 have a crew come in and counts your inventory,  
 25 counts what's in your store, in the pharmacy

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1 Barrett - Confidential  
 2 and the front end.  
 3 Q. Are you involved in inventory  
 4 dates with the new district?  
 5 A. On inventory day I'm not involved.  
 6 Q. You're not involved on the day of?  
 7 A. Not on the day of. No. I don't  
 8 as a rule even go to them.  
 9 Q. Are you involved in the  
 10 preparation that it takes for inventory days?  
 11 A. I am.  
 12 Q. How are you involved?  
 13 A. Just make sure the store's ready  
 14 for inventory.  
 15 Q. And what happens on inventory  
 16 days?  
 17 MR. SCOTT: Object to form.  
 18 Vague.  
 19 A. Just the inventory crews scans  
 20 the labels throughout the store and counts  
 21 what's on the shelf and does the same in the  
 22 pharmacy.  
 23 Q. Do you know whether or not the  
 24 inventory crew are Rite Aid employees?  
 25 A. They're not.

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1 Barrett - Confidential  
 2 Q. They are not?  
 3 A. They are not. We use a service.  
 4 Q. Do you know what service you  
 5 used?  
 6 A. We use Washington -- I'm pretty  
 7 sure it's Washington Inventory Service.  
 8 Q. Do you know who decided to use  
 9 Washington Inventory Service?  
 10 A. That's done in corporate. I'm  
 11 not a hundred percent sure that's the name  
 12 of the inventory crew, but I think it is.  
 13 Q. On inventory days, are store  
 14 managers expected to be at the store at a  
 15 certain time?  
 16 A. Yes.  
 17 Q. What time is that?  
 18 A. 6 a.m.  
 19 Q. Do you know who decided this  
 20 time?  
 21 A. No.  
 22 Q. Do you know whether or not that  
 23 time came from corporate?  
 24 A. Could have. I'm not sure.  
 25 Let me just correct one thing.

47 (Pages 185 to 188)



1	Barrett - Confidential	306
2	A C K N O W L E D G E M E N T	
3		
4	I, MICHAEL BARRETT, hereby	
5	certify that I have read the transcript	
6	of my testimony taken under oath in my	
7	deposition of January 27, 2012; that	
8	the transcript is a true, complete and	
9	correct record of what was asked,	
10	answered and said during this deposition,	
11	and that the answers on the record as	
12	given by me are true and correct.	
13		
14		
15	MICHAEL BARRETT	
16		
17	Subscribed and sworn to	
18	before me this ____ day	
19	of _____, 2012.	
20		
21	_____ NOTARY PUBLIC	
22		
23		
24		
25		

# Exhibit PPP

1 IN THE UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3  
4 YATRAM INDERGIT, ON BEHALF OF )  
HIMSELF AND OTHERS SIMILARLY )  
5 SITUATED, )

6 PLAINTIFF, ) CASE NO.  
7 ) 1:08-CV-09361-PGG-HBP

8 vs. )

9 RITE AID CORPORATION, RITE AID OF )  
NEW YORK, INC., AND FRANCIS OFFOR AS )  
AIDER & ABETTOR, )

10 DEFENDANTS. )  
11 \_\_\_\_\_ )  
12  
13  
14  
15

16 VIDEOTAPED DEPOSITION OF WALTER BRADFORD

17 TAKEN FRIDAY, FEBRUARY 10, 2012

18 LOS ANGELES, CALIFORNIA  
19  
20  
21  
22  
23  
24

25 Reported by Audra E. Cramer, CSR No. 9901  
Job No. 84918

1 Q. Have there been any other times where you told  
2 a store manager that they couldn't promote someone?

3 MS. PUCKETT: Objection to form.

4 THE WITNESS: I honestly can't recall any  
5 situations other than that scenario.

6 THE VIDEOGRAPHER: I'm sorry. I need to change  
7 tapes.

8 MS. PUCKETT: Okay.

9 THE VIDEOGRAPHER: All right. Off the record  
10 at 2:04 p.m. This is the end of Tape 2.

11 (Recess taken.)

12 THE VIDEOGRAPHER: We are on the record  
13 at 2:14 p.m. This is the beginning of Tape 3.

14 BY MS. SCOTT:

15 Q. Mr. Bradford, do you know what I mean when I  
16 say "managerial"?

17 MS. PUCKETT: Object to form. Calls for a  
18 legal conclusion.

19 BY MS. SCOTT:

20 Q. Let me actually strike that.

21 Do you know what I mean when I say "managerial  
22 duties"?

23 MS. PUCKETT: Same objection.

24 THE WITNESS: Well, I don't know what you mean,  
25 because it could be in reference to something else. You



1 know, no.

2 BY MS. SCOTT:

3 Q. What would your definition of "managerial  
4 duties" be?

5 MS. PUCKETT: Object to form. Calls for a  
6 legal conclusion.

7 You can answer.

8 THE WITNESS: Okay.

9 In my district everything they do is a  
10 managerial duty.

11 BY MS. SCOTT:

12 Q. Everything a store manager does is a managerial  
13 duty under your definition?

14 A. Yes.

15 Q. So you would say unloading the truck would be a  
16 managerial duty?

17 MS. PUCKETT: Same objection. Standing  
18 objection to all these questions on calls for a legal  
19 conclusion.

20 Go ahead.

21 THE WITNESS: Well, I think that's part of  
22 their job. A certain percentage of their job they're  
23 going to have to do those kind of things, so that's part  
24 of the managerial duty. I think -- yes, I do. I think  
25 it's a managerial duty.

1 BY MS. SCOTT:

2 Q. Would you consider stocking shelves a  
3 managerial duty?

4 MS. PUCKETT: Same objection.

5 THE WITNESS: In my district a manager might be  
6 involved in every aspect of the store, and I believe  
7 that everything that they do is a managerial duty. So I  
8 would say yes, it would be.

9 BY MS. SCOTT:

10 Q. So you would believe that facing shelves would  
11 be a managerial duty?

12 MS. PUCKETT: Same objection.

13 THE WITNESS: Again -- once again,  
14 managerial -- anything that -- they're the manager, and  
15 anything that they do could be encompassed in a  
16 managerial duty.

17 BY MS. SCOTT:

18 Q. So working cash registers would be a managerial  
19 duty?

20 MS. PUCKETT: Objection. Asked and answered.

21 THE WITNESS: Again, a managerial duty --  
22 anything that they do -- and I think we've talked about  
23 it previously that a manager might check on a particular  
24 week anywhere from zero -- yes, that would be a part of  
25 their job, would be a managerial duty.

1 BY MS. SCOTT:

2 Q. So if a manager scoops ice cream, you would  
3 consider scooping ice cream a managerial duty?

4 MS. PUCKETT: Object to form. Same objection.

5 THE WITNESS: I believe it is. I believe in my  
6 district everything that a manager does is a managerial  
7 duty.

8 Now, the manager has a lot of things that they  
9 do, and in my district -- in the state of California a  
10 manager is tasked with spending more than 50 percent of  
11 their time as being the manager: coaching, training  
12 teaching, planning, organizing. So if that's  
13 51 percent, there's 49 percent left that they have an  
14 opportunity, and -- so their duties are more than  
15 50 percent of the time be managerial, and say 49 percent  
16 or less of the time they may be involved in those other  
17 things that encompass everyday life in a retail store.

18 Most -- you know, it depends. In a lot of  
19 cases managers use those opportunities. So they might  
20 be stocking a shelf side by side with another associate.  
21 They use it as a training tool. They use it as a  
22 coaching tool. They use it as a meeting tool. So I  
23 know managers that will have little meetings with people  
24 on load day, and they will go around and work with  
25 everybody, so they're stocking the shelf.

1           There's kind of a -- you know, how do you  
2   define what part of that minute that they're stocking  
3   the shelf, is that a managerial  
4   coaching/training/teaching percentage, or is that a  
5   stocking a shelf percentage? In some cases it might be  
6   both percentage. So I just think that it's  
7   all-encompassed. Everything they do is their duty --  
8   managerial duty as long as, in my district in the state  
9   of California, that 51 percent -- or more than  
10   50 percent of the time they spend on planning, coaching,  
11   teaching, training, organizing, those things.

12           MS. SCOTT: Objection. Nonresponsive.

13           Q.   Mr. Bradford, do you consider scooping  
14   ice cream a managerial duty?

15           MS. PUCKETT: Objection to form, and same  
16   objection as before regarding legal conclusion.

17           THE WITNESS: Yes, in my district for my  
18   managers in the state of California, I believe that they  
19   can scoop an ice cream, and that is part of their duty.  
20   And that would fall into the 49 percent.

21           BY MS. SCOTT:

22           Q.   Because the store manager is doing it, it's a  
23   managerial duty?

24           MS. PUCKETT: Objection to form.

25           Now you both need to listen to each other.

1 MS. SCOTT: Counsel, it's something that he  
2 said, and it's the question I'm asking. It's got  
3 nothing to do with me listening or not.

4 MS. PUCKETT: No, I think he didn't listen to  
5 your previous question, and then I think you didn't  
6 listen to his answer. So you might want to back up a  
7 couple questions.

8 THE WITNESS: Can you ask me a question. I'm  
9 sorry.

10 BY MS. SCOTT:

11 Q. I believe you've answered the question that I  
12 asked. Now I'm asking: Do you believe that just  
13 because the store manager does something, it's  
14 managerial?

15 MS. PUCKETT: Objection to form. Asked and  
16 answered. Calls for a legal conclusion.

17 THE WITNESS: I believe in my district in the  
18 state of California that anything the manager does when  
19 he's working is managerial.

20 BY MS. SCOTT:

21 Q. So if a manager cleans a toilet, you consider  
22 cleaning toilets managerial?

23 MS. PUCKETT: Object to form.

24 THE WITNESS: I would say in my district in my  
25 state, that that would fall into the 49 percent, yes,

1 managerial.

2 BY MS. SCOTT:

3 Q. Cleaning spills would be considered managerial?

4 MS. PUCKETT: Objection to form.

5 THE WITNESS: Yes.

6 BY MS. SCOTT:

7 Q. Collecting shopping carts from the street --

8 MS. PUCKETT: Counsel --

9 BY MS. SCOTT:

10 Q. -- would be considered managerial?

11 MS. PUCKETT: -- I don't think you need to run  
12 down the list. He's answered your question.

13 MS. SCOTT: Ms. Puckett, it's my deposition. I  
14 can ask whatever questions I want to ask.

15 MS. PUCKETT: Within reason. But --

16 MS. SCOTT: No, I can ask --

17 MS. PUCKETT: -- I mean, this is just  
18 ridiculous.

19 MS. SCOTT: -- whatever questions I want to ask  
20 that are not divulging privilege.

21 MS. PUCKETT: You can burn up your time any way  
22 you want. So go ahead. I'm just going to continue to  
23 object because I think he's asked and answered your  
24 question.

25 MS. SCOTT: You have both a running objection

1 and you continue objecting.

2 MS. PUCKETT: Okay.

3 MS. SCOTT: That's well within your right and  
4 well within my right of asking questions.

5 MS. PUCKETT: All right. Go ahead.

6 BY MS. SCOTT:

7 Q. Do you consider collecting shopping carts from  
8 the street managerial?

9 MS. PUCKETT: Objection to form.

10 THE WITNESS: Yes.

11 BY MS. SCOTT:

12 Q. Do you consider washing windows managerial?

13 MS. PUCKETT: Objection. Form.

14 THE WITNESS: Yes, under the concept that  
15 49 percent of the time the manager can be doing those  
16 things.

17 BY MS. SCOTT:

18 Q. Do you consider cleaning the breakroom  
19 managerial?

20 MS. PUCKETT: Objection. Form.

21 THE WITNESS: Yes. Same response as before.

22 BY MS. SCOTT:

23 Q. Do you consider sweeping floors managerial?

24 MS. PUCKETT: Objection to form.

25 THE WITNESS: Yes. Same response as prior.

1 BY MS. SCOTT:

2 Q. Do you consider mopping the floors managerial?

3 MS. PUCKETT: Objection to form.

4 THE WITNESS: Yes. Same response as prior.

5 BY MS. SCOTT:

6 Q. Do you consider pricing items with their price  
7 managerial?

8 MS. PUCKETT: Objection to form.

9 THE WITNESS: Yes.

10 And I want to say that it depends. These are  
11 all very specific questions, and a lot of managers,  
12 again, use that time to coach and teach and train while  
13 they're doing things. It might be you have a brand-new  
14 person, and you're showing them how to sweep or you're  
15 showing them how to mop. Or in some situations there's  
16 a safety issue. If there's something on the floor,  
17 we're not going to wait for somebody to come clean it  
18 up. That's -- the manager keeps his store safe, and  
19 that might be something that he needs to do, and  
20 that's -- to me, that's part of a managerial duty.

21 BY MS. SCOTT:

22 Q. Do you consider manually dismantling a shelf  
23 managerial?

24 MS. PUCKETT: Objection to form.

25 THE WITNESS: I'm not sure I understand the



1 dismantling of a shelf.

2 BY MS. SCOTT:

3 Q. If a store manager or anyone dismantles a shelf  
4 for whatever reason, would you consider that managerial?

5 A. I think it would fall within the 49 percent,  
6 yes.

7 Q. So you consider it managerial?

8 MS. PUCKETT: Objection to form.

9 THE WITNESS: Again, the same thing. In my  
10 district the managers might have an opportunity that  
11 they have to do that. They might be doing it with  
12 somebody else. They might combine it. So there could  
13 be a situation. It depends how they're doing it. Are  
14 they doing it with somebody else? And, again, I believe  
15 that, as part of their managerial job, there is some  
16 things like this that are part of that job.

17 BY MS. SCOTT:

18 Q. So if a store manager manually dismantles a  
19 shelf, you would consider that managerial?

20 MS. PUCKETT: Objection to form.

21 THE WITNESS: Yes, I would.

22 BY MS. SCOTT:

23 Q. Would you consider waxing floors managerial?

24 MS. PUCKETT: Object to form.

25 THE WITNESS: In my district a manager doesn't

YATRAM INDERGIT, ET AL. vs. RITE AID, ET AL.  
 Walter Bradford on 02/10/2012

1:08-CV-09361-PGG-HBP  
 Page 261

1 STATE OF CALIFORNIA )  
 2 COUNTY OF ~~LOS ANGELES~~ ) SS.  
                   FRESNO

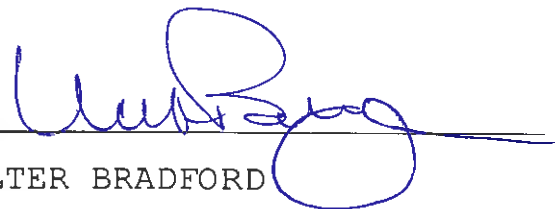
3  
 4  
 5 I, WALTER BRADFORD, hereby certify under  
 6 penalty of perjury under the laws of the State of  
 7 California that the foregoing is true and correct.

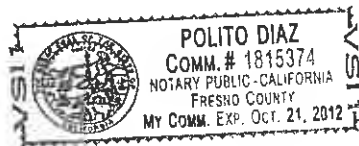
8 Executed this 14<sup>th</sup> day of  
 9 MARCH, 2012, at  
 10 FRESNO, California.



POLITO DIAZ  
 COMM. # 1815374  
 NOTARY PUBLIC - CALIFORNIA  
 FRESNO COUNTY  
 MY COMM. EXP. OCT. 21, 2012

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 WALTER BRADFORD



POLITO DIAZ  
 COMM. # 1815374  
 NOTARY PUBLIC - CALIFORNIA  
 FRESNO COUNTY  
 MY COMM. EXP. OCT. 21, 2012

Exhibit QQQ

[Page 1]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

YATRAM INDERGIT, on behalf of himself and all

others similarly situated,

Plaintiff,

08 CV 9361 (PGG)

- against -

RITE AID CORPORATION, RITE AID OF NEW YORK, INC.

and FRANCIS OFFOR as Aider & Abettor

Defendants.

-----X

1745 Broadway  
New York, New York 10019  
July 12, 2012  
9:45 a.m.

EXAMINATION BEFORE TRIAL OF JAMES CARPENTER,  
a Witness herein, taken by the attorney for the  
Plaintiff, Pursuant to Notice, and held at the  
above-mentioned time and place, before Kimberly  
Dean, a stenographer and Notary Public within and  
For the State of New York.

1 James Carpenter

2 A. Yes.

3 Q. Before we went on break we were talking  
4 about operation meetings, do you recall that?

5 A. Yes.

6 Q. Do you know whether or not during the  
7 meeting operations related to the Rite Aid stores  
8 are discussed?

9 A. Could you be more specific.

10 Q. Sure. When you say operations meeting  
11 s, is it the operations of the Rite Aid stores?

12 A. Of all stores. You mean Brooks Eckerd  
13 and Rite Aid. All Rite Aid.

14 Q. When I say Rite Aid, I mean the stores  
15 that are currently Rite Aid stores?

16 A. Okay. Yes.

17 Q. Are there stores right now at least that  
18 you are aware of that are still in the transitional  
19 phase from Brook Eckerd to Rite Aid?

20 A. Not that I am aware of.

21 Q. Within your district the stores have  
22 already transitioned from Brooks Eckerd to Rite  
23 Aid?

24 A. Yes.

25 Q. When you mentioned earlier core stores,

1 James Carpenter

2 you meant Rite Aid core stores?

3 A. Former Rite Aid. I should say former  
4 yes. The difference between the 2. Former Brooks  
5 Eckerd verse core Rite Aid.

6 Q. We were talking about when you were made  
7 aware of the fact that certain stores managers  
8 within your district would be changed from salary  
9 to hourly? Do you recall that?

10 A. Yes.

11 Q. You mentioned that you recall the method  
12 for the process that resulted in the change from  
13 salary to hourly, do you recall the method and  
14 process?

15 MS.MOELLER: Objection to form.

16 A. Vaguely. I remember that the  
17 information was reviewed with us and I held a store  
18 managers meeting in my district office and  
19 explained it to all of the managers with the  
20 assistance of the HR manager.

21 Q. When you mentioned the process that  
22 changed some managers from salary to hourly, what  
23 was the process that you were referring to?

24 A. Stores were classified and a chart 1  
25 through chart 7 based on their annual current front

1 James Carpenter

2 end sales volume.

3 Q. Who provided you with the charts?

4 A. I believe HR.

5 Q. Do you recall whether or not your store  
6 managers were provided with the charts?

7 A. They were told and they were provided  
8 information of what chart their store was. They  
9 were explained the overall charts. Volume ranges.

10 Q. They were explained what was contained  
11 on the charts regarding the volume changes?

12 A. They were explained what the charts  
13 meant. And what chart their store would fall  
14 under. In my district there were charts 3, 4 and 5  
15 only.

16 Q. When explaining the charts to the store  
17 managers, do you recall if they actually received a  
18 copy of the charts?

19 A. They didn't see any charts with specific  
20 information on them. They may have seen a memo  
21 that said what the volume ranges were. So, aside  
22 from what the charts 1 through 7 meant by volume  
23 range.

24 Q. You mentioned that you had held a  
25 meeting with store managers in your office with the

1 James Carpenter

2 assistance of the HR department?

3 A. Yes. I have a conference room there.

4 Q. Do you recall who from HR was present?

5 A. Bill Farley.

6 Q. What is his title?

7 A. HR manager.

8 Q. Aside from Bill Farley and yourself, who  
9 else was present at the meeting?

10 A. Possibly Ed Lefever. Loss prevention  
11 manager. I don't recall if he was there for that  
12 part of the meeting.

13 Q. Were all of the store managers in your  
14 district at the time in attendance at the meeting?

15 A. Yes.

16 Q. Who spoke during the meeting?

17 A. Myself and Mr. Farley.

18 Q. What did you say during the meeting?

19 A. I explained the change s that were  
20 taking place and I explained the work flow  
21 efficiencies that were taking place. Then I met  
22 with each individual one on one to review the  
23 change in -- actually that might have been a  
24 different meeting.

25 I don't believe that I met with each



James Carpenter

I have read the foregoing record of my  
testimony taken at the time and place noted in the  
heading hereof and I do hereby acknowledge it to be  
a true and correct transcript of same.

\_\_\_\_\_  
JAMES CARPENTER

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC

# Exhibit RRR

Yatram Indergit, et al. v. Rite Aid Corporation, et al. 08Civ9361(PGG) (HBP)  
Paul Johnson February 21, 2012

Page 1

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT,                     )  
On behalf of himself                )  
and others similarly                 )  
situated                                )  
                                      )  
Plaintiffs,                            ) Civil Action File  
                                      ) No. 08Civ9361  
vs.                                     ) (PGG) (HBP)  
                                      )  
RITE AID                                )  
CORPORATION, RITE                    )  
AID OF NEW YORK,                     )  
INC., and FRANK                       )  
OFFOR as Aider &                     )  
Abettor,                                )  
                                      )  
Defendants.                             )

- - -

Deposition of  
PAUL JOHNSON

(Taken by Plaintiffs)

Atlanta, Georgia  
February 21, 2012

Reported by: Lynne C. Fulwood

Certified Court Reporter

Page 111

1 into the system that the manager oversees.

2 Q Okay. But that's the three-step, if  
3 you will, process, correct? Store manager  
4 enters data, Workforce Management automatically  
5 generates a schedule and then store manager can  
6 edit that schedule?

7 A Yes.

8 MS. CAMPBELL: Object to the form  
9 of the question.

10 BY MS. SCOTT:

11 Q That's a yes?

12 A Yes, that's how they work, yes.

13 Q Do you know if Workforce Management  
14 was a software product that was created by Rite  
15 Aid internally or was it purchased by an  
16 outside company?

17 A That I do not know.

18 Q What factors are utilized when  
19 Workforce Management automatically creates that  
20 schedule?

21 MS. CAMPBELL: Object to the form  
22 of the question.

23 A I don't understand your question of  
24 factors. What are you looking for for factors?

25 BY MS. SCOTT:

Page 112

1 Q What -- how does Workforce Management  
2 automatically generate that schedule? What  
3 factors is it relying upon?

4 MS. CAMPBELL: Object to the form  
5 of the question. Answer if you can.

6 A As I stated previously, the manager  
7 inputs that information. Those are the  
8 factors.

9 BY MS. SCOTT:

10 Q So it's just based upon the  
11 information that the manager inputs?

12 A The manager inputs the information  
13 into the system based on the associate's  
14 availability and then they rank the associates  
15 based on their qualifications that they're able  
16 to do --

17 Q It's also based upon a forecast of  
18 the budget, the labor budget, correct?

19 MS. CAMPBELL: Object to the form  
20 of the question.

21 A The stores have a -- have a budget or  
22 a fixed number of hours that they are required  
23 to come within guidelines. The Workforce  
24 Management System works towards those numbers.

25 Q Right. In creating the schedule

1     though, are -- is data from sales for the store  
2     entered by the store manager?

3             A     Into the Workforce Management?

4             Q     Yes.

5             A     It is not.

6             Q     It is not. Is that a factor that's  
7     relied upon in determining the schedule?

8             A     The Workforce Management System is  
9     based automatically on their hours that have --  
10    that have been set for that store.

11            Q     Okay. So the payroll's already been  
12    determined by corporate and that's a factor in  
13    the schedule that's set for Workforce  
14    Management?

15            A     Again, it's based on what I said  
16    earlier about the tier for each store, there's  
17    a set number of hours for each of those tiers.  
18    That's what's in the system.

19            Q     And a store manager can't go over  
20    that hourly budget, correct?

21            A     They are not to schedule over those  
22    hours, correct.

23            Q     Is the store manager's salary a part  
24    of the budget that's considered by Workforce  
25    Management?

Page 265

Page\_\_\_\_\_ Line\_\_\_\_\_ should

read:\_\_\_\_\_

Reason for

change:\_\_\_\_\_

Page\_\_\_\_\_ Line\_\_\_\_\_ should

read:\_\_\_\_\_ Reason for

change:\_\_\_\_\_

Page\_\_\_\_\_ Line\_\_\_\_\_ should

read:\_\_\_\_\_ Reason for

change:\_\_\_\_\_

Signature

Sworn to and Subscribed before me

\_\_\_\_\_, Notary Public.

This\_\_\_\_\_ day of \_\_\_\_\_, 2012.

My Commission Expires:

REPORTED BY: Lynne C. Fulwood, CCR [www.huseby.com](http://www.huseby.com)

HUSEBY, INC. - 555 North Point Center, E., #403, Alpharetta, GA 30022 (404) 875-0400

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# Exhibit SSS



**Yatram Indergit vs. Rite Aid Corporation, et al.  
John Perkins on 02/21/2012**

**08Civ9361 (PGG)(HBP)  
Page 1**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3  
4 Yatram Indergit, on behalf of )  
5 himself and others similarly )  
6 situated, )

7 Plaintiffs, )

8 vs. )

9 Rite Aid Corporation, Rite Aid of )  
10 New York, Inc., and Frank Offor, )  
11 as Aider & Abettor, )

12 Defendants. )

13 - - -

14 VIDEOTAPED DEPOSITION OF  
15 JOHN PERKINS  
16 FEBRUARY 21, 2012  
17 9:00 A.M.

18 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
19 191 PEACHTREE STREET, N.E.  
20 SUITE 4800  
21 ATLANTA, GEORGIA

22 REPORTED BY:

23 STEVEN S. HUSEBY, RPR  
24 CCR-B-1372  
25

1 Q. Okay. But Mr. Barrett didn't come in  
2 and tell you, John, this is only being applied  
3 to your district?

4 A. Correct.

5 Q. Now, for all of the assistant store  
6 managers in your district, are they all still  
7 salaried?

8 A. All the districts -- assistant  
9 managers in my current district, they are all  
10 hourly.

11 Q. And when did that change occur?

12 A. 90 percent of them occurred at the  
13 time when the change was made for the manager  
14 position going to an hourly position. The  
15 other two in the higher volume stores was  
16 changed a year, year and a half ago.

17 Q. Now, during this transition over the  
18 last two to three years from 90 percent of  
19 your store managers switching from salaried to  
20 hourly and 100 percent of your assistant store  
21 managers ultimately switching from salaried to  
22 hourly, did any of their job descriptions  
23 change?

24 MS. ZELDIN: Object to the form.

25 THE WITNESS: No.

1 BY MR. ELLWANGER:

2 Q. Did any of their job duties change?

3 MS. ZELDIN: Objection.

4 THE WITNESS: No.

5 BY MR. ELLWANGER:

6 Q. So the only thing that changed as a  
7 part of this policy was that the vast majority  
8 of them were switched from salaried to hourly?

9 MS. ZELDIN: Object to the form.

10 THE WITNESS: Correct.

11 MS. ZELDIN: Sorry, go ahead.

12 THE WITNESS: Correct.

13 BY MR. ELLWANGER:

14 Q. Was any reasoning given to you by your  
15 regional vice president as to why assistant  
16 store managers were changed from salaried to  
17 hourly?

18 A. No.

19 Q. Once the store managers who became  
20 hourly were switched to hourly did they then  
21 become eligible for overtime?

22 A. Yes.

23 Q. Prior to that switch being made and

24 they were salaried employees were they

25 eligible for overtime?

1 A. No.

2 Q. But to be clear, their job

3 responsibilities did not change?

4 MS. ZELDIN: Object to the form.

5 THE WITNESS: Correct.

6 BY MR. ELLWANGER:

7 Q. And let's ask the same questions about  
8 assistant store managers. Prior to assistant  
9 store managers being switched from salaried to  
10 hourly, were they eligible for overtime?

11 A. When they were salaried position?

12 Q. Correct.

13 A. No.

14 Q. Are they eligible for overtime now?

15 A. Yes.

16 Q. But did their job duties change at  
17 all?

18 MS. ZELDIN: Object to the form.

19 THE WITNESS: No.

20 BY MR. ELLWANGER:

21 Q. Did the number of hours that a store  
22 manager is expected to work change when their  
23 salary changed to hourly?

24 MS. ZELDIN: Object to the form.

25 THE WITNESS: Yes.

1 BY MR. ELLWANGER:

2 Q. How many hours were they expected to  
3 work as a salaried employee?

4 MS. ZELDIN: Object to the form.

5 THE WITNESS: 50.

6 BY MR. ELLWANGER:

7 Q. How many hours were they expected to  
8 work as an hourly employee?

9 MS. ZELDIN: Object to the form.

10 Are you talking about in his district?

11 MR. ELLWANGER: Yes.

12 MS. ZELDIN: Okay.

13 THE WITNESS: 45.

14 BY MR. ELLWANGER:

15 Q. And were they paid overtime for any  
16 hours over 40 or just hours over 45?

17 A. Hours over 45.

18 Q. And are they paid time and a half?

19 A. I'm sorry, did I say 45?

20 Q. Yes.

21 A. I'm sorry, hours over 40, I apologize.

22 Q. So and the schedule, they are  
23 scheduled for five hours of overtime every  
24 week?

25 A. Correct.

**Yatram Indergit vs. Rite Aid Corporation, et al.  
John Perkins on 02/21/2012**

**08Civ9361 (PGG)(HBP)  
Pages 362..365**

ERRATA SHEET Page 362	CERTIFICATE Page 364
<p>Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or the Official Code of Georgia Annotated 9-11-30(e) any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them.</p> <p>To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.</p> <p>I, the undersigned, JOHN PERKINS, do hereby certify that I have read the foregoing deposition and that to the best of my knowledge said deposition is true and accurate (with the exception of the following corrections listed below).</p> <p>Page _____ Line _____ should read: _____ Reason for change: _____</p> <p>Page _____ Line _____ should read: _____ Reason for change: _____</p> <p>Page _____ Line _____ should read: _____ Reason for change: _____</p> <p>Page _____ Line _____ should read: _____ Reason for change: _____</p>	<p align="center"><b>G E O R G I A:</b> <b>FULTON COUNTY:</b></p> <p>I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.</p> <p>Pursuant to Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:</p> <p>I am a Georgia Certified Court Reporter. I am here as an independent contractor for Huseby, Inc.</p>
<p>Page _____ Line _____ should read: _____ Reason for change: _____</p> <p>Page _____ Line _____ should read: _____ Reason for change: _____</p> <p>Page _____ Line _____ should read: _____ Reason for change: _____</p> <p>Page _____ Line _____ should read: _____ Reason for change: _____</p> <p>Signature: <i>John Perkins</i> Notary to and Subscribed before me _____ Notary Public. This _____ day of <u>March</u> 2012. My Commission Expires: <u>life</u> <b>Mary E. Spears, Notary Public #58914</b> My commission expires with my life</p>	<p>I was contacted by the offices of Huseby, Inc. to provide court reporting services for this deposition. I will not be taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-7 (a) or (b).</p> <p>I have no written contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case.</p> <p>This, the 24th day of February, 2012.</p> <p align="right"><i>Steve S. Huseby</i> STEVE S. HUSEBY, C-1372 My Commission Expires January 20th, 2015.</p>

Exhibit TTT

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
YATRAMINDERGIT, on behalf of himself  
and all others similarly situated,  
Plaintiffs, Index No  
- against - 08CV9361(PGG)  
RITE AID CORPORATION, RITE AID OF  
NEW YORK, INC. and FRANCIS OFFOR  
as Aider & Abettor,  
Defendants.

-----x  
January 26, 2012  
250 Park Avenue

New York, New York  
9:03 a.m.

Videotaped Deposition of WILLIAM  
SPINK, taken by the Attorneys for the Plaintiff,  
pursuant to Notice, before Bonnie Kreuzburg, a  
Shorthand Reporter and Notary Public within and  
for the State of New York.

Page 2

# APPEARANCES:

VALLI KANE & VAGNINI  
Attorneys for Plaintiffs  
600 Old Country Road  
Garden City, New York 11530  
BY: DEBORAH L. RUBIN, ESQ.

OGLETTREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
Attorneys for Defendants  
191 Peachtree Tower  
Atlanta, Georgia 30303  
BY: MARGARET H. CAMPBELL, ESQ.

ALSO PRESENT: Gavin McCandlish, Intern with  
Valli Kane & Vagnini  
Videographer, Tim Rugman

Page 3

# STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and  
between the attorneys for the respective parties  
hereto, that the sealing and filing of the within  
deposition be waived; that such deposition may be  
signed and sworn to before any officer authorized  
to administer an oath with the same force and  
effect as if signed and sworn to before a Justice  
of this Court.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to form, are  
reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within examination and any corrections  
thereto may be signed before any Notary Public  
with the same force and effect as if signed and  
sworn to before this Court.

Page 4

THE VIDEOGRAPHER: United States  
District Court, Southern District of New  
York. Yatram Indergit, on behalf of himself  
and all others similarly situated,  
Plaintiff, versus Rite Aid Corporation, Rite  
Aid of New York, Inc., and Francis Offor, as  
Aider & Abettor, Defendants. Index number  
08CV9361(PGG).

WILLIAM SPINK,  
called as a witness, having been first duly  
sworn by the Notary Public (Bonnie  
Kreuzburg), was examined and testified as  
follows:

COURT REPORTER: Please state your  
name for the record.

THE WITNESS: William Spink.

COURT REPORTER: Please state your  
address for the record.

THE WITNESS: 1503 Genesee Street,  
Utica, New York 13501.

EXAMINATION BY  
MS. RUBIN:

Q. Good morning, Mr. Spink.

A. Good morning.

1 (Pages 1 to 4)



Page 73

1 W. Spink  
 2 A. I understand internal to be associates  
 3 that are paid by Rite Aid. I understand internal  
 4 -- and external could also include our vendor  
 5 business partners, who are our customers, and also  
 6 at some point act in a position of associate when  
 7 they're bringing their product in the store, to  
 8 fill the shelf space that warehouses that  
 9 individual products.  
 10 Q. Can you read number 5 for the record?  
 11 A. "Responsible for the district retail  
 12 budgets, including sales, script growth, margin,  
 13 labor, and expenses, and overall P&L results,  
 14 monthly, to ensure operating income and EBITDA are  
 15 achieved."  
 16 Q. Would you agree that number 5 was part  
 17 of your duties and responsibilities as a district  
 18 manager?  
 19 A. I would agree.  
 20 Q. Could you tell me what your  
 21 involvement was in the district retail budgets,  
 22 including sales?  
 23 A. I'd ask that to be more specific,  
 24 because that's broad.  
 25 Q. Well, I want to understand what your

Page 74

1 W. Spink  
 2 responsibility was relating to district retail  
 3 budgets.  
 4 A. I was accountable to work towards  
 5 achieving those budgets.  
 6 Q. For each district you worked in, you  
 7 were given a budget, a retail budget?  
 8 A. As a district manager?  
 9 Q. As a district manager.  
 10 A. Yes.  
 11 Q. And you had to achieve those budgets?  
 12 A. That was the goal.  
 13 Q. Did you achieve those budgets?  
 14 A. I don't recall every time, no. Most  
 15 of the time, did I? I would like to believe I  
 16 did. I think that certainly I either achieved  
 17 them, came very close to achieving them or  
 18 exceeded them.  
 19 Q. Could you tell me what's involved in a  
 20 district retail budget?  
 21 A. I don't understand your question in  
 22 regards to what's involved.  
 23 Q. Well, I personally do not know what is  
 24 part of a retail budget, so if you could explain  
 25 what is part of a retail budget in a Rite Aid

Page 75

1 W. Spink  
 2 district, that would be helpful.  
 3 A. You would have a sales budget. You  
 4 have expense budgets. You have EBITDA budget.  
 5 Q. That encompass the retail budget?  
 6 A. The part that I'm accountable for.  
 7 Q. There was another part?  
 8 A. There's the corporate budget.  
 9 Q. And you were not accountable for the  
 10 corporate budget?  
 11 A. I'm accountable for the field EBITDA,  
 12 not the corporate EBITDA.  
 13 Q. Now, could you tell me what EBITDA is?  
 14 A. The Earnings Before Interest, Taxes,  
 15 Depreciation and Amortization.  
 16 Q. Is there any other way of describing  
 17 it?  
 18 A. Not that I'm aware of.  
 19 Q. Is it considered your profit at the  
 20 end of the day? Maybe not the day.  
 21 MS. RUBIN: Strike that.  
 22 Q. Is it considered your profit?  
 23 A. The profit is not the EBITDA. In any  
 24 textbook I've ever studied, it is the cash flow.  
 25 Q. We're going to come back to this.

Page 76

1 W. Spink  
 2 A. Okay.  
 3 Q. How are you responsible for script  
 4 growth as a district manager?  
 5 A. Up to 2009?  
 6 Q. As a district manager.  
 7 A. Between 2003 to 2009?  
 8 Q. Between 2003 to 2009, yes.  
 9 MS. CAMPBELL: I'm going to object to  
 10 the form of the question, because if you're  
 11 purporting to ask him a question about  
 12 number 5 --  
 13 MS. RUBIN: Yes, I am. I'm looking at  
 14 5. Number 5 says "responsible for the  
 15 district retail budgets, including sales,  
 16 script growth, et cetera, so I'm trying to  
 17 break it down by each point.  
 18 Q. So, how are you responsible for script  
 19 growth?  
 20 A. In varying degrees. The pharmacy  
 21 district manager is more accountable for that than  
 22 myself. I am there to influence and support the  
 23 pharmacy district manager.  
 24 Q. Do you think you are not responsible  
 25 for script growth then?

Page 149

1 W. Spink

2 Q. What is that?

3 A. That's where a district manager is  
4 recognized in the company for outstanding  
5 performance.

6 Q. Is there a national recognition?

7 A. Yes.

8 Q. Did you aspire to become a district  
9 manager of the year?

10 A. It would have been nice. Sometimes  
11 those metrics that you have to achieve are not  
12 always in your control.

13 Q. Do you know how one would become the  
14 district manager of the year?

15 A. Between the years 2003 and 2009, I  
16 cannot say with complete confidence I know, other  
17 than it was based off the performance results of  
18 the district.

19 Q. Do you know who selects the district  
20 manager of the year?

21 A. I don't know confidently. It would be  
22 the executive leadership team.

23 Q. When you were working as a district  
24 manager, did you want to be promoted to regional  
25 vice-president?

Page 151

1 W. Spink

2 A. It's just a personal goal for myself,  
3 as I want to advance into the company as far as I  
4 can.

5 Q. When you were a district manager, what  
6 were you trying to do to show your superiors that  
7 you had promotion potential?

8 A. Develop a good team, a team of  
9 managers that really took ownership, and managers  
10 that were encouraged to develop themselves to want  
11 to do more themselves.

12 Q. Do you believe that meeting company  
13 goals and staying within budget would be looked at  
14 as a good factor in promoting you?

15 MS. CAMPBELL: Object to the form of  
16 the question.

17 A. I would ask you to maybe restate that,  
18 because it really -- there's a lot more to that  
19 than just company budgets to get promoted.

20 Q. Do you believe that the success of  
21 your stores would translate into seeing you as a  
22 candidate with promotion potential?

23 MS. CAMPBELL: Object to the form of  
24 the question. You're asking about what  
25 somebody else thinks.

Page 150

1 W. Spink

2 A. Yes.

3 Q. Why?

4 A. I have always been someone who always  
5 wanted to excel.

6 Q. Have you discussed with anyone in the  
7 company what is involved in the job duties of a  
8 regional vice-president?

9 A. Yes.

10 Q. Who have you discussed that with?

11 A. Various vice-presidents that I have  
12 worked for.

13 Q. Is there something about their job  
14 duties that made you want to be a regional  
15 vice-president?

16 A. I get personal satisfaction about  
17 being able to influence other people's lives and  
18 see them be able to develop and grow and get  
19 promoted. So, that is probably one -- one of the  
20 variety of reasons I'd like to advance.

21 Q. Anything else about the job duties  
22 that have encouraged you at the time to get  
23 promoted to regional vice-president?

24 MS. CAMPBELL: Objection to the form  
25 the question. Answer, if you can.

Page 152

1 W. Spink

2 MS. RUBIN: I'm asking what he thinks.

3 A. I would say not always does that  
4 partake, is that a single factor.

5 Q. Did you request that position of  
6 pharmacy district manager?

7 A. I had conversations in that -- that  
8 year that I was in Connecticut with the pharmacy  
9 regional vice-president about a pharmacy district  
10 manager position, yes.

11 Q. It was a position that you wanted?

12 A. Yes. At the time they had taken some  
13 DMs and made them non-licensed pharmacy district  
14 managers, and it was another part of the business  
15 I could learn.

16 Q. I want to be clear. Was it a request  
17 that you made or a decision the company made that  
18 you went along with?

19 A. A combination.

20 Q. Are you happy in the position?

21 A. Yes.

22 Q. Do you still want to be promoted to  
23 regional vice-president?

24 A. Yes.

25 Q. Do you know what a SYSM is?

38 (Pages 149 to 152)

Page 153

1 W. Spink  
 2 A. Yes.  
 3 Q. What is it?  
 4 A. I like to refer to it as an outdated  
 5 form of e-mail.  
 6 Q. Did you use SYSMs in communicating  
 7 with your store managers?  
 8 A. Yes.  
 9 Q. How often?  
 10 A. It varies. Sometimes daily, sometimes  
 11 every other day.  
 12 Q. Did you ever receive SYSMs from your  
 13 store managers?  
 14 A. Yes.  
 15 Q. Is that also daily or every other day?  
 16 A. Well, there is one of me and 28 of  
 17 them. It was every day.  
 18 Q. Did you ever receive SYSMs from your  
 19 regional vice-president?  
 20 A. Yes.  
 21 Q. How often?  
 22 A. Sometimes daily, sometimes every other  
 23 day. That varied.  
 24 Q. Were there specific things that you  
 25 would communicate by SYSMs to your store managers?

Page 154

1 W. Spink  
 2 A. Really, it would depend. It varied  
 3 from the district that I was in.  
 4 Q. Was there anything that you regularly  
 5 communicated through SYSM?  
 6 A. Yes.  
 7 Q. What was that?  
 8 A. Customer service scores.  
 9 Computer-based compliance -- computer-based  
 10 training compliance scores. That's probably two  
 11 of the ones that were consistent across all three  
 12 districts.  
 13 Q. Did you expect your store managers to  
 14 review the SYSMs they received from you?  
 15 A. Yes.  
 16 Q. Did all of your SYSMs to store  
 17 managers require a response?  
 18 A. No.  
 19 Q. Did you have a way of knowing whether  
 20 or not they viewed a SYSM from you?  
 21 A. I believe there is a way on the system  
 22 I can tell that, but I can definitely tell you I  
 23 didn't generally do that. I entrusted that they  
 24 read and communicated properly.  
 25 Q. What sorts of things would be in SYSMs

Page 155

1 W. Spink  
 2 from your regional vice-president?  
 3 MS. CAMPBELL: Object to the form of  
 4 the question. To whom?  
 5 Q. To you.  
 6 A. During the years of 2003 to 2009, as  
 7 my time as a district manager, we would get SYSMs  
 8 listing generally the CSI scores for the district.  
 9 If there was an initiative coming out or an  
 10 initiative that they wanted to follow up with to  
 11 make sure we are all promoting in the stores. It  
 12 really varied from season to season, from time of  
 13 year to time of year. It's very difficult for me  
 14 to say what kind of SYSMs I got. A lot of times  
 15 they would be unique to the current event --  
 16 current events.  
 17 Q. Would you ever get SYSMs from anyone  
 18 above the regional vice-president?  
 19 A. It was rare, but there would be times,  
 20 yes.  
 21 Q. From who, if you remember?  
 22 A. The senior vice-president.  
 23 Q. Anyone else?  
 24 A. There could be others. Sometimes the  
 25 SYSMs may come out from corporate. Maybe a SYSM

Page 156

1 W. Spink  
 2 coming out to -- something to remind us to remind  
 3 our stores about.  
 4 Q. And, when you say us?  
 5 A. When I refer to us, to the district  
 6 management team.  
 7 Q. How often would you get SYSMs from  
 8 corporate?  
 9 A. It varied from time to time. It  
 10 depended, again, on the season, what was -- what  
 11 was potentially the -- the, um, issue that they  
 12 wanted to communicate with the field leadership  
 13 team and the store teams.  
 14 Q. More than once a year?  
 15 A. I would say yes.  
 16 Q. More than four times a year?  
 17 A. I would say yes.  
 18 Q. Once a month?  
 19 A. I can't say that confidently here,  
 20 thinking for 20 seconds about 2003 to 2009, but I  
 21 would have to say that I'm sure there was some  
 22 communication that came out on a monthly basis  
 23 that may have impacted all the stores that they  
 24 wanted to communicate to the district management  
 25 team as well as the store teams.

39 (Pages 153 to 156)

[Page 79]

[Page 79]


1                   A C K N O W L E D G E M E N T  
2                   O F   D E P O N E N T  
3

4           I, BILL SPINK, acknowledge that I have read  
5   the entire transcript of my deposition taken in  
6   the captioned matter or the same has been read  
7   to me, and the same is true and accurate, save  
8   and except for changes and/or corrections, if  
9   any, as indicated by me on the DEPOSITION  
10   ERRATA SHEET hereof, with the understanding  
11   that I offer these changes as if still under  
12   oath.

13                   

14                   BILL SPINK

15  
16   Subscribed and sworn to on the 10<sup>th</sup> day of  
17   August, 2012 before me,

18                   

19   Notary Public,

20   in and for the State of new York

21                   JACQUELINE M. EMMA  
22                   Notary Public, State of New York  
23                   Qualified in Oneida County  
24                   Commission Expires 10/22/14  
25

Exhibit UUU

[Page 1]

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

YATRAM INDERGIT, on behalf of himself :  
and others similarly situated, :  
Plaintiffs, : CASE NO.  
-vs- : 9361 (PGG)  
RITE AID CORPORATION, RITE AID OF :  
NEW YORK, INC. and FRANK OFFER as :  
Aider & Abettor, :  
Defendants. :  
-----X

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Videotaped Deposition Testimony of KRISTIN CRANDALL

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TAKEN BY: PLAINTIFFS

BEFORE: KATHRYN PLIZGA, RPR  
NOTARY PUBLIC

TIME: MAY 24, 2012, 9:49 A.M.

PLACE: PEPPER HAMILTON, LLP  
100 MARKET STREET, SUITE 200  
HARRISBURG, PENNSYLVANIA

1     there is a process for approving job descriptions.

2             And typically it is the leader of the work  
3     center who's responsible, like that position would report  
4     up into. That would be the impetus for writing the job  
5     description and creating the contents.

6             And then there's a review process of that that  
7     would include the leader typically of that pyramid. In  
8     this case it would be the store operations pyramid.

9             And then there's also a review by the HR  
10    department which is typically our compensation and  
11    benefits team that actually puts it in this job  
12    description format and looks for, you know, form and  
13    types of content and the job descriptions in general.

14            So I don't recall signing off on specifically  
15    the store manager one. But typically it would be the  
16    pyramid, the store operations pyramid, and then the HR  
17    department; but more on the benefit and compensation  
18    side to sign off on the structure of the job description.

19            Q.    Perhaps an easier question for me to ask and  
20    for you to answer is whether or not you have knowledge  
21    of the different store manager job descriptions that Rite  
22    Aid has?

23            A.    Yes.

24            Q.    Do you know how many different job description  
25    forms Rite Aid maintains for its store managers?



1 MR. TURNER: Objection, vague.

2 A. Yeah, I am aware of there being two --

3 Q. What are they?

4 A. -- at the current time.

5 They're both called store manager. There's an  
6 exempt store manager position and there's a non-exempt  
7 store manager position.

8 Q. I'm not trying to make this a memory test, just  
9 asking you if you know without having to go through it,  
10 do you know the differences between the exempt store  
11 manager job description and the non-exempt store manager  
12 job description?

13 MR. TURNER: Objection. To the extent you need  
14 to review the documents, since you are testifying on  
15 behalf of the company, then you should feel free to  
16 review them.

17 If you're asking her in her personal knowledge,  
18 then it's outside the scope.

19 MR. ELLWANGER: I will ask her as a corporate  
20 representative, so feel free to review.

21 MR. TURNER: Objection, the documents speak for  
22 themselves also.

23 A. The two job descriptions are very, very  
24 similar. There is a slight wording difference in one  
25 portion of the job descriptions.



1           In general, with both, whether the store manager  
2   is exempt or non-exempt, they are in charge of the store,  
3   the enterprise, so to speak, fronting a million plus --  
4   in most cases a million plus dollar business.

5           So they are responsible for the running of that  
6   store, the profit and loss of the store, various parts of  
7   being responsible for being the head of the enterprise or  
8   running the store.

9           So the job descriptions themselves are very  
10   similar other than, again, just a couple of wording  
11   things. And then, of course, the designation of salary  
12   versus hourly in the description at the top of it.

13           MR. ELLWANGER: Object to non-responsive.

14           Q.   Is the only difference between the store  
15   manager job description for exempt employees and the  
16   store manager job description for non-exempt employees  
17   the difference between how those salaries are classified  
18   on those two different job descriptions?

19           A.   No. As I stated, there are some wording  
20   differences.

21                   Do you want me to point out the exact     wording  
22   differences?

23           Q.   As Mr. Turner pointed out, the documents speak  
24   for themselves.

25           A.   Okay.

1           Q.    And you participated in these discussions that  
2           occurred in the past?

3           A.    Well, the past is a long time.  I have  
4           participated in some of the conversations.  I doubt I was  
5           part of all of them.

6           Q.    Okay.  Is there a particular time frame you're  
7           thinking about when the bulk of these discussions took  
8           place?

9           A.    Yes, in the time frame of early 2009, we were  
10          really looking at making lots of changes to our store  
11          operations, simplifying processes, changing payroll  
12          allocation, things of that nature.  And there was a big  
13          push at that time.

14                That's when we first clarified in a written way  
15          that was disseminated to our district teams on the  
16          expectations of what type of staff should be working in  
17          the store.

18          Q.    Okay.  So that's 2009, I want to leave that for  
19          a minute, and we'll go back to it.

20                Present day maybe, let's go back one year from  
21          today, have there been any discussions from the business  
22          side about the classification of store managers?

23                MR. TURNER:  Subject to -- and don't disclose  
24          any privileged conversations or communications -- so  
25          subject to that you may answer.

1           A.    Yeah.  Not that it wouldn't fall under a  
2   privileged-type discussion.

3   BY MR. PRICE:

4           Q.    Okay.  Has Rite Aid opened any stores in the  
5   last year?

6           MR. TURNER:  Objection, exceeds the scope.

7           A.    If we have opened stores it's -- I am not  
8   aware of just a new store opening -- you might have a  
9   store that's considered new if you account for maybe a  
10   relocation.  We're not on a track for opening a lot of  
11   new stores.  I can't say with certainty we didn't open  
12   any, there weren't many if there were any at all though.

13          Q.    Understood.  That was more of a foundational  
14   question.  What I want to get at is I want to understand  
15   the process of what Rite Aid does present day when a new  
16   store is opened or a store is reconfigured to where there  
17   will be a volume shift or a size shift.

18                I want to understand how the determination is  
19   made as to how a store manager is going to be classified  
20   exempt versus non-exempt.  Can you explain that to me?

21          A.    In general, the stores will look at from a  
22   front-end store volume.  So front end, I mean, it's most  
23   things that aren't actual prescriptions.

24                So we'll look at that front-end store volume,  
25   we'll go back to the charts that we created -- I'm pretty

1 sure you've seen -- that say if the front-end store  
2 volume is within this range, it gets a certain complement  
3 of management or leadership positions. And it outlines  
4 our shift supervisors, assistant managers, co-managers  
5 and store managers.

6 And along with that would be the exempt  
7 classification for the store manager position.

8 Q. When you say along with that it's the exempt  
9 store manager, it's not always exempt though, is that  
10 right?

11 A. No. That's going to be dependent mostly on the  
12 volume and the chart that -- there are charts at  
13 different store volumes that we've said, if you're at  
14 this volume you have approximately "X" amount of shift  
15 supervisors, you may or may not have an assistant manager  
16 and the store manager may be exempt or non-exempt. Those  
17 things are all part of the discussion as we reconfigure,  
18 open or move a store.

19 Q. Okay. Do you know of any instances where Rite  
20 Aid has deviated from the recommendation of the chart  
21 with respect to the classification of the store manager  
22 when your store opens?

23 MR. TURNER: Object to form and exceeds the  
24 scope.

25 A. What I do now, I don't know every -- I don't

1 have a chart of every store that has exempt versus the  
2 non-exempt store manager in it today. But I can tell you  
3 what I do know.

4 There have been instances where a store might be  
5 right on the cusp of being either exempt or non-exempt  
6 and we'll do a pretty in-depth look at the  
7 responsibilities, the staffing, the manager's style as to  
8 how they run their business. And we'll try to make sure  
9 that we've put them in the right classification, whether  
10 it's exempt or non-exempt.

11 So we have the stores that are right on the  
12 border, a store that may have out-performed expectations  
13 in one year, so it's a higher volume. We'll go in and  
14 take a look at the store's situation, the store manager,  
15 and make our decision from there.

16 So if there are exceptions, that's where I think  
17 the majority of the -- you know -- if there are  
18 exceptions that's where they would lie.

19 Q. Have you been involved in that process of  
20 analyzing these borderline cases?

21 MR. TURNER: Objection, exceeds the scope.  
22 You're asking her personally, correct?

23 MR. PRICE: Yeah, I'm asking her personally at  
24 this point but --

25 A. Yeah, this would be from more of a personal --

1           A.     What do you mean by data?

2           Q.     Well, there are parameters in the chart, right?

3           A.     Correct.

4           Q.     Here is how I am guessing the chart looks.

5     There's a table -- it's set up like a table and you  
6     look and see -- it's this size and this --

7           MR. TURNER:   We can do this.   Can we get you  
8     a copy of it?

9           MR. PRICE:    If we can do it during the depo  
10    that would be great.

11          MR. TURNER:   Let's take a break and we'll do  
12    it right now.

13          MR. PRICE:    Look, I'll move on, I will keep  
14    going.   We will come back to the chart.   When it shows up  
15    we will dig on it.

16          MR. TURNER:   That way we're not guessing at  
17    what it looks like.

18          MR. PRICE:    I thought I had a good guess  
19    though.   I was going to nail that.

20          MR. TURNER:   I know.

21          MR. PRICE:    You guys are going to think I was a  
22    wonderful   questioner because I was able to guess that.

23    BY MR. PRICE:

24          Q.     Anyway, here we go.   So let's go back to 2009  
25    then since we're going to put the chart on the table for

1 a while.

2 So as of '09 we have some store managers that  
3 are classified as non-exempt, right?

4 A. Mid-way through 2009, yes.

5 Q. Before the 2009 restructuring, were all store  
6 managers exempt?

7 A. Yes. There may have been an exception of a  
8 management trainee or something of that nature. But the  
9 job descriptions for the actual store manager position  
10 were all exempt.

11 Q. And then coming out of the 2009 restructuring,  
12 a decision was made to make some of those store managers  
13 non-exempt, correct?

14 MR. TURNER: Objection as to form. You can  
15 answer.

16 A. Yes. There was a decision made that in  
17 certain stores the store manager position was going to be  
18 non-exempt.

19 Q. Was the chart used to make those decisions at  
20 that time?

21 MR. TURNER: Object to form and exceeds the  
22 scope.

23 A. I wouldn't say it the way you just said it.  
24 I would say that it defined the general expectations of  
25 when there would be an exempt store manager versus a non-

1     exempt.

2                 So it defines in general our expectation of  
3     whether there would be an exempt or a non-exempt job code  
4     available in a store.

5     BY MR. PRICE:

6                 Q.     Okay. But did it exist at the time of the  
7     restructuring?

8                 MR. TURNER: I'm sorry, did what exist?

9                 Q.     The chart.

10                MR. TURNER: Objection, exceeds the scope.

11                A.     Yes, as we moved forward and made the changes  
12     specific to the personnel side. So operational changes  
13     were going on all along like how we unload trucks and  
14     how we bag purchases at the front register. And, you  
15     know, so there were operational decisions and efficiency  
16     exchanging over a long period of time.

17                In some cases the store hours changed in some  
18     stores. So after looking at all that we said, okay, this  
19     volume -- this is when we'll have a store manager that's  
20     exempt versus non-exempt.

21                And as we made the personnel changes that went  
22     along with this, that chart was the guide to who -- which  
23     stores would be exempt and none-exempt. And then the  
24     next step of that would be the managers that were there  
25     would either be put in one job code or the other.



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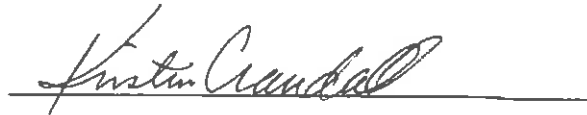
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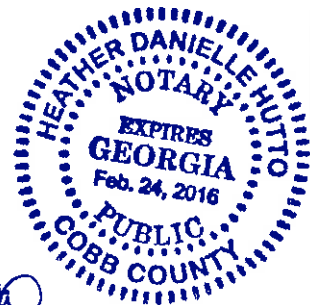
25

I have read the foregoing transcript of my deposition given on May 24, 2012, and it is true, correct and complete, to the best of my knowledge, recollection and belief, except for the corrections noted hereon and/or list of corrections, if any, attached on a separate sheet herewith.



KRISTIN CRANDALL

Subscribed and sworn to  
before me this 27<sup>th</sup> day  
of June, 2012.



Notary Public